

CHAPTER 757

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

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

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

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

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

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.01.

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

STATE OF WISCONSIN,

County of

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

....(Signature)

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

....(Signature)

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

(3) The judges of such courts shall be conservators of the peace, and have power to administer oaths and take the acknowl-

edgments of deeds and other written instruments throughout the state.

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

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

The county board was without authority to adopt a resolution providing for the reduction and termination of its supplement to county judges' salaries on the contingency of increases in state salaries, since the resolution allowed for a mid-term reduction in compensation and constituted an unsanctioned interference with the legislature's authority to fix and increase county salaries. *State ex rel. Conway v. Elvod*, 70 W (2d) 448, 234 NW (2d) 354.

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

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

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

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

This section is intrusion by legislature into exclusively judicial area of judicial decision-making and, as such, is unconstitutional violation of separation of powers doctrine. Court adopts rule of judicial administration entitled "SCR 70.36 Judges' Certification of Status of Pending Cases". In *Matter of Complaint Against Grady*, 118 W (2d) 762, 348 NW (2d) 559 (1984).

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

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

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

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

757.12 Adjournment to another place. Whenever it is 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 court. All proceedings in the court may be continued at adjourned times and places and be of the same force and effect as if the court had continued its sessions at the place it was held before the adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the appointment, and shall be published as a class I notice, under ch. 985, or in such other manner as is required in the order.

History: 1977 c. 187 s. 96; 1977 c. 449; Stats. 1977 s. 757.12.

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

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

757.14 Sittings, public. The sittings of every court shall be public and every citizen may freely attend the same, except if 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 exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.14.

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

Court abused discretion by excluding public from voir dire of potential jurors. *State ex rel. La Crosse Tribune v. Circuit Ct.* 115 W (2d) 220, 340 NW (2d) 460 (1983).

Closure of voir dire was abuse of discretion. *State ex rel. Storer v. Gorenstein*, 131 W (2d) 342, 388 NW (2d) 633 (Ct. App. 1986).

See note to 51.20, citing *St. ex rel. Wis. Jour. v. Dane Cir. Ct.*, 131 W (2d) 515, 389 NW (2d) 73 (Ct. App. 1986).

Public access to criminal trials in particular is protected by First Amendment. *Globe Newspaper Co. v. Superior Court*, 457 US 596 (1982).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Judges are disqualified only where they have acted as counsel for a party in the matter to be heard or determined. *Sturdevant v. State*, 49 W (2d) 142, 181 NW (2d) 523.

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

Although judge was apparently partial against defense counsel, refusal to recuse self was harmless error. *State v. Walberg*, 109 W (2d) 96, 325 NW (2d) 687 (1982).

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

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

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

757.22 Judge not to act as attorney, etc.; attorneys not to have office with judge. (1) No judge, while holding office, may be in any manner engaged or act as attorney or counsel; and no judge or his or her clerk or any person employed by the judge in or about his or her office, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any

matter or action pending before the judge or officer, or which the judge has reason to believe will be brought before him or her for decision, or draft or prepare any papers, including wills, or other proceedings relating to any such matter or action except when expressly authorized by law; and no court commissioner or other judicial officer may be allowed to demand or receive any fees or compensation for services as such commissioner or judicial officer, except those expressly authorized by law, upon penalty, for any violation hereof, of removal from office.

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

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

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

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

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

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

See note to 865.065, citing 63 Atty. Gen. 55.

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

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

757.24 Liability of judicial officers. Circuit judges 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 if the motions are made in accordance with law or such rules as are promulgated by the supreme court.

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

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

or the judge thereof. The fee for the clerk's services for depositing and disbursing the money is prescribed in s. 814.61 (12) (a).

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

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

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

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

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

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

(3) A member of the state bar of Wisconsin shall file with the state bar annually, with payment of the member's state bar dues or upon such other date as approved by the supreme court, a certificate stating whether the member is engaged in the private practice of law in Wisconsin and, if so, the name of each bank, trust company, credit union, savings bank or savings and loan association in which the member maintains a trust account, safe deposit box, or both, as required by this section. A partnership or professional legal corporation may file one certificate on behalf of its partners, associates, or officers who are required to file under this section. The failure of a member to file the certificate required by this sec-

tion is grounds for automatic suspension of the member's membership in the state bar in the same manner as provided in section 6 of rule 2 of the Rules of the State Bar of Wisconsin for nonpayment of dues. The filing of a false certificate is unprofessional conduct and is grounds for disciplinary action. The state bar shall supply to each member, with the annual dues statement or at such other time as directed by the supreme court, a form on which the certification must be made and a copy of this section.

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

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

The issuance by an attorney of 49 checks drawn upon his clients' trust account within a 13-month period—some for personal purposes or for loans to others, and all dishonored by the bank for lack of sufficient funds—constituted unprofessional conduct for which he is suspended from the practice of law for one year and ordered to pay up to \$500 of the costs of this proceeding. *State v. Stoveken*, 68 W (2d) 716, 229 NW (2d) 224.

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

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

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

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

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

See note to art. I, sec. 3, citing *In Re Primus*, 436 US 412 (1978).

Solicitation may be barred even though "speech" is component of that activity. *Ohralik v. Ohio State Bar Assn.* 436 US 447 (1978).

757.30 Penalty for practicing without license.

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

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

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

or indirectly, as authorized to practice law in this state, shall be deemed to be purporting to be licensed to practice law as an attorney within the meaning of this section.

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

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

See note to Art. I, sec. 3, citing *Hopper v. Madison*, 79 W (2d) 120, 256 NW (2d) 139.

A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. To do so constitutes practicing law without a license in violation of s. 757.30 and voids the appeal. Requiring a lawyer to represent a corporation in filing the notice does not violate constitutional guarantees of equal protection, due process or the right of any suitor to prosecute or defend a suit personally. *Jadair Inc. v. United States Fire Insurance Co.* 209 W (2d) 187, 561 NW (2d) 718 (1997).

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

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

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

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

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

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

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

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

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

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

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

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

757.37 When action settled by parties, what proof to enforce lien. If any such cause of action is settled by the parties thereto after judgment has been procured without notice to the attorney claiming the lien, the lien may be enforced and it shall

only be required to prove the facts of the agreement by which the lien was given, notice to the opposite party or his or her attorney and the rendition of the judgment, and if any such settlement of the cause of action is had or effected before judgment therein, then it shall only be necessary to enforce the lien to prove the agreement creating the same, notice to the opposite party or his or her attorney and the amount for which the case was settled, which shall be the basis for the lien and it shall not be necessary to prove up the original cause of action in order to enforce the lien and suit.

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

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

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

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

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

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

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

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

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

but the county board may determine by ordinance that the library be closed on Saturdays. Attorneys and the general public shall be permitted to use the books in the library in the building housing the library under rules and regulations adopted by the county board.

(2) In any county with a population of 500,000 or more, the librarian shall be appointed in the unclassified service by the county executive, subject to confirmation by the county board. The librarian may be dismissed at any time by the county executive with the concurrence of a majority of the members—elect of the county board or by a majority of the members—elect of the county board with the concurrence of the county executive. If the county executive vetoes an action by the county board dismissing the librarian, the county board may override the veto by a two-thirds vote of its members—elect. Assistants shall be appointed as the county board determines, under ss. 63.01 to 63.17.

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

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

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

757.46 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 or her assistants may be employed by any person or corporation to take the statement of any injured or other person in any way relating to the manner in which the person was injured or killed or the extent of personal injuries, and any reporter or assistant violating this section shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation of this section. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section.

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.46.

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

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

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

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

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

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

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

757.48 Guardian ad litem must be an attorney. (1) (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767.

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

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

(3) No guardian ad litem may be permitted to receive any money or property of his or her ward, nor may any bond be required of a guardian ad litem, but all money or property of his or her ward may be paid or delivered to a general guardian of his or her property subject to the exceptions of s. 880.04.

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

History: Sup. Ct. Order, 50 W (2d) vii (1971) 1971 c. 211; 1977 c. 187 s. 96; 1977 c. 299, 447; Stats. 1977 s. 757.48; 1987 a. 355; 1993 a. 16; 1995 a. 27.

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

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

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

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

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

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

Cross-reference: Compare s. 701.15 concerning guardians in trust matters.

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

757.54 Retention and disposal of court records. The retention and disposal of all court records and exhibits in any civil or criminal action or proceeding or probate proceeding of any nature in a court of record shall be determined by the supreme court by rule.

History: Sup. Ct. Order, 136 W (2d) xi (1987).

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

History: 1981 c. 353.

NOTE: See SCR ch. 71.

757.57 Transcripts. (2) In any criminal action or proceeding the court may order, and when required by s. 973.08 the court shall order, a transcript of the testimony and proceedings to be

made and certified by the reporter and filed with the clerk of court. Certified duplicates of transcripts prepared in compliance with s. 973.08 shall be filed with the warden or superintendent of the institution to which sentenced persons have been committed. The cost of the transcript is prescribed in s. 814.69 (1). In case of application for a pardon or commutation of sentence the duplicate transcript shall accompany the application.

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

History: 1977 c. 187 s. 96; Stats. 1977 s. 757.57; 1979 c. 32 s. 92 (4); Sup. Ct. Order, eff. 1–1–80; 1981 c. 317, 353, 389; 1987 a. 403 s. 256; 1995 a. 27.

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

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

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

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

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

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

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

(6) The 6th district consists of Adams, Clark, Columbia, Dodge, Green Lake, Juneau, Marquette, Portage, Sauk, Waushara and Wood counties.

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

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

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

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

History: 1977 c. 449; Sup. Ct. Order, 84 W (2d) xiii (1978); Sup. Ct. Order, eff. 1–1–80; 1981 c. 317; 1995 a. 225.

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

allowances in ss. 861.31, 861.33 and 861.35. The district attorney or the department of justice, as applicable, shall commence and prosecute all actions and proceedings necessary under this section to make the recovery when it appears that the indigent defendant or his or her estate is able to pay the claim.

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

Recovery of legal defense fees from indigent defendants discussed. *James v. Strange*, 407 US 128.

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

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

757.68 Court commissioners. (1) APPOINTMENT. (a) Except as provided in par. (b), counties having a population of 100,000 or more may create the office of full-time court commissioner. The county board shall establish the number of positions and set the salary for the office. Any person qualified and acting as a judicial court commissioner on August 1, 1978, shall be deemed a full-time court commissioner and shall continue in the classified county civil service but any new appointee shall be in the unclassified (exempt) civil service. The chief judge shall be the appointing and supervising authority and may terminate the employment of any such commissioner if cause is proven. The chief judge may delegate any such supervising authority. The full-time court commissioners shall be attorneys licensed to practice in this state. Each court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.

(b) In counties having a population of 500,000 or more, the county board shall establish at least one full-time court commissioner position under par. (a) to assist in the administration of the procedures for small claims type actions under ch. 799. In counties having a population of less than 500,000, the county board may establish one or more part-time or full-time court commissioner positions under par. (a) to assist in the administration of small claims type actions under ch. 799. Any court commissioner appointed under this paragraph shall be an attorney licensed to practice in this state.

(2) PART-TIME COURT COMMISSIONERS. In each county the circuit judges shall appoint such number of part-time court commissioners as the proper transaction of business requires subject to the following exception: in counties having a population of 200,000 or more each judge may appoint not more than 2 such commissioners and in counties having a population of less than 200,000 each judge shall, as nearly as possible, appoint an equal number of commissioners within the county. In all counties the appointments shall be subject to the approval of a majority of the circuit judges for the county. Appointments shall be in writing and shall be filed in the office of the clerk of the circuit court. All court commissioners appointed after May 16, 1978, other than official court reporters acting under s. 814.68 (1) (b) performing duties or exercising powers specified for court reporters, shall be attorneys licensed to practice in this state. The appointing judge may remove, at will and without cause, any court commissioner appointed by the judge or the judge's predecessor in office. Unless he or she is so removed, the term of each court commissioner shall continue until the expiration of the term of the appointing judge and until the successor of the commissioner is appointed and qualified. Each court commissioner shall take and file the official oath in the office of clerk of the circuit court of the county for which appointed before performing any duty of the office.

(3) CONCILIATORS. In all counties, retired circuit judges appointed to act as conciliators pursuant to s. 807.09 may be appointed court commissioners, in addition to those appointed under sub. (1). The term of court commissioners appointed to act

as conciliators under s. 807.09 shall continue until a successor is appointed and qualifies.

(4) ELIGIBILITY OF FORMER INFERIOR COURT JUDGES. Any former judge of an inferior court of record of this state shall be eligible to appointment as a court commissioner, by any judge authorized by this section to make such appointment, in addition to those specified in sub. (1).

(5) FEES. Part-time court commissioners appointed under sub. (2) shall collect the fees prescribed in s. 814.68 (1).

History: 1973 c. 278; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 199; 1975 c. 430 s. 80; 1977 c. 187 s. 96; 1977 c. 323 ss. 7, 11; 1977 c. 345; 1977 c. 418 ss. 751, 752; 1977 c. 447 ss. 192 to 195; 1977 c. 449; Stats. 1977 s. 757.68; 1979 c. 32 s. 92 (16); 1981 c. 317 ss. 85pg, 2202; 1987 a. 151, 208.

Where appointing order referred only to this section, commissioner did not have authority to issue warrant. *State v. Loney*, 110 W (2d) 256, 328 NW (2d) 872 (Ct. App. 1982).

757.69 Powers and duties of court commissioners.

(1) On authority delegated by a judge, which may be by a standard order, and with the approval of the chief judge of the judicial administrative district, a court commissioner appointed under s. 48.065, 757.68, 757.72, 767.13 or 938.065 may:

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

(b) In criminal matters issue summonses, arrest warrants or search warrants and conduct initial appearances of persons arrested and set bail to the same extent as a judge. At the initial appearance, the court commissioner shall, when necessary, inform the defendant in accordance with s. 970.02 (1). If the defendant appears or claims to be unable to afford counsel, the court commissioner, in accordance with s. 970.02 (6), may refer the person to the authority for indigency determinations specified under s. 977.07 (1). If the court commissioner is a full-time court commissioner, he or she may conduct the preliminary examination and arraignment to the same extent as a judge and, with the consent of both the state and the defendant, may accept a guilty plea. If a court refers a disputed restitution issue under s. 973.20 (13) (c) 4., the court commissioner shall conduct the hearing on the matter in accordance with s. 973.20 (13) (c) 4.

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

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

(e) Conduct noncontested probate proceedings.

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

(g) When assigned to the court assigned jurisdiction under chs. 48 and 938, a court commissioner may, under ch. 48 or 938, issue summonses and warrants, order the release or detention of children or expectant mothers of unborn children taken into custody, conduct detention and shelter care hearings, conduct preliminary appearances, conduct uncontested proceedings under ss. 48.13, 48.133, 938.12, 938.13 and 938.18, enter into consent decrees and exercise the powers and perform the duties specified in par. (j) or (m), whichever is applicable, in proceedings under s. 813.122 or 813.125 in which the respondent is a child. Contested waiver hearings under s. 938.18 and dispositional hearings under ss. 48.335 and 938.335 shall be conducted by a judge. When acting in an official capacity and assigned to the children's court center, a court commissioner shall sit at the children's court center or such other facility designated by the chief judge. Any decision by the commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order or ruling by the commissioner may be certified to the branch of court to which such case has been assigned upon a motion of any party for a hearing de novo.

(h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20, 51.45 and 55.06 (11), conduct reviews of guardianships and protective placements and protective services under chs. 55 and 880, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions and, if the person claims or appears to be unable to afford counsel, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

(i) Conduct inquests under ch. 979.

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

(k) Exercise the power of a juvenile court commissioner appointed under s. 48.065 or 938.065, a probate court commissioner appointed under s. 757.72 or a family court commissioner appointed under s. 767.13.

(m) Hold hearings, make findings and issue orders under s. 813.125.

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

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

NOTE: Par. (o) was created as par. (n) by 1997 Wis. Act 192 and renumbered by the revisor under s. 13.93 (1) (b), all eff. 12–1–99.

(2) A judge may refer to a court commissioner appointed under s. 48.065, 757.68, 757.72, 767.13 or 938.065 cases in which:

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

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

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

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

(3) Court commissioners appointed under s. 48.065, 757.68, 757.72, 767.13 or 938.065 may under their own authority:

(a) Officiate at marriage ceremonies throughout the state.

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

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

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

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

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

(g) Except as provided in s. 767.13 (5) (c), conduct a paternity proceeding according to the procedures set out in ch. 767 whenever a court commissioner is specifically authorized to do so.

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

(i) Take and certify acknowledgments.

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

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

(6) Every judge of a court of record has the powers and duties of a court commissioner.

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

History: 1977 c. 323, 449; 1979 c. 32; 1979 c. 89; 1979 c. 209 s. 4; 1979 c. 352, 356; 1983 a. 279; 1985 a. 126, 202, 234, 332; 1987 a. 3, 27, 71, 378, 398; 1989 a. 7, 12, 31, 246; Sup. Ct. Order, 158 W (2d) xxv (1990); 1991 a. 39, 269; 1993 a. 318, 451, 481; 1995 a. 77; 1997 a. 191, 192, 292; s. 13.93 (1) (b).

Judicial Council Note, 1987: Sub. (3) (h), stats., is amended to clarify that a court commissioner who conducts a hearing on the present financial status of a judgment debtor may appoint a receiver in aid of execution, direct the application of nonexempt assets to the satisfaction of the judgment, and allow fees, costs and disbursements to the judgment creditor or any party at the hearing. [87 Act 71]

Judicial Council Note, 1990: The amendments to subs. (1), (2) and (3) give juvenile court commissioners, probate court commissioners and family court commissioners the same authority as court commissioners appointed under s. 757.68, and allow court commissioners appointed under s. 757.68 to be delegated the authority to act as juvenile court commissioners, probate court commissioners or family court commissioners. [Re Order eff. 1–1–91]

Failure of judge to formally authorize commissioner to issue search warrants was nothing more than judicial oversight and did not justify suppression of evidence. *State v. Verkuylen*, 120 W (2d) 59, 352 NW (2d) 668 (Ct. App. 1984).

Non-lawyer court reporters cannot be delegated power to issue criminal warrants and conduct initial appearances under (1) (b). 72 Atty. Gen. 39.

757.695 Court commissioners; small claims matters.

If a court commissioner has been appointed under s. 757.68 (1) (b) to assist in the administration of small claims matters, the commissioner shall conduct the hearings and proceedings as prescribed by ch. 799 and shall have the following additional duties and authority:

(1) Grant and enter default judgments and approve stipulations.

(2) Conduct conferences and hearings with the parties or their attorneys or both on the return dates and adjourned dates, if any.

(3) Issue decisions in matters that come before the commissioner. The decisions shall become judgments under s. 799.207 (2).

History: 1977 c. 345; 1979 c. 32 s. 92 (16).

757.70 Hearings before court commissioners. (1) All

proceedings and hearings before a court commissioner shall be public and open to every citizen, except juvenile proceedings or when it is necessary for the court in which the action or proceeding is pending to impose by order restrictions under its inherent power to conduct proceedings in camera.

(2) All hearings before a court commissioner shall be held in the county courthouse or other court facilities provided by law. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.69 (3) (h) or depositions taken before a court commissioner.

History: 1977 c. 323.

757.72 Office of probate court commissioner. (1) In

counties having a population of 500,000 or more, there is created in the classified civil service the office of probate court commissioner. In counties having a population of at least 100,000 but not more than 500,000, the county board may create the office of probate court commissioner which may be in the classified civil service.

(2) Judges assigned probate jurisdiction may assign to the probate court commissioners any matters over which the judges have jurisdiction, and the probate court commissioners may determine such matters and may sign any order or certificate required in such determination.

(3) Probate court commissioners shall receive such salary and be furnished with quarters, necessary office furnishings and supplies as determined by the county board.

(4) In counties having a population of 500,000 or more the chief judge of the judicial administrative district shall appoint and may remove probate court commissioners under ss. 63.01 to 63.17. In counties having a population of at least 100,000 but not more than 500,000 the chief judge shall appoint and may remove any probate court commissioner if cause is proven. Probate court commissioners shall be attorneys licensed to practice in this state.

(5) The register in probate of a county shall have the duties and powers of a probate court commissioner and shall act in that capacity when designated to do so by a judge assigned probate jurisdiction.

(6) Before entering upon the performance of their duties, probate court commissioners shall take and file the official oath.

(7) Probate court commissioners shall by virtue of their respective positions, and to the extent required for the performance of their duties, each have the powers of a court commissioner.

(8) The probate court commissioners may administer oaths, take depositions and testimony, and certify and report the depositions and testimony, take and certify acknowledgments, allow accounts and fix the amount and approve the sufficiency of bonds.

History: 1977 c. 323, 449.

757.81 Definitions. In ss. 757.81 to 757.99:

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

(2) “Court commissioner” means a court commissioner under s. 757.68, a family court commissioner under s. 767.13, a juvenile court commissioner under s. 48.065 or 938.065 and a probate court commissioner under s. 757.72.

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

(4) “Misconduct” includes any of the following:

- (a) Wilful violation of a rule of the code of judicial ethics.
- (b) Wilful or persistent failure to perform official duties.
- (c) Habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties.
- (d) Conviction of a felony.

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

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

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

Provisions for judicial disciplinary proceedings under 757.81 to 757.99 are constitutional. In *Matter of Complaint Against Seraphim*, 97 W (2d) 485, 294 NW (2d) 485 (1980).

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

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

(2) **QUORUM; VOTING.** A majority of the commission constitutes a quorum. The commission may issue a formal complaint or

a petition only upon a finding of probable cause by a majority of the total membership not disqualified from voting. A member must be present to vote on the question of probable cause. A member shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

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

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

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

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

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

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

(3) The commission may notify a judge or court commissioner that the commission is investigating possible misconduct by or permanent disability of the judge or court commissioner. Before finding probable cause, the commission shall notify the judge or court commissioner of the substance of the complaint or petition and afford the judge or court commissioner a reasonable opportunity to respond. If the judge or court commissioner responds, the commission shall consider the response before it finds probable cause.

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

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

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

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

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

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

inspection under s. 19.35 after the formal complaint or the petition is filed.

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

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

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

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

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

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

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

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

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

(2) If prior to the filing of a formal complaint or a petition an investigation of possible misconduct or permanent disability becomes known to the public, the commission may issue statements in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge or court commissioner to a fair hearing without prejudgment, to state that the judge or court commis-

sioner denies the allegations, to state that an investigation has been completed and no probable cause was found or to correct public misinformation.

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

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

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

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

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

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

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

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

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

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

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

757.95 Temporary suspension by supreme court. The supreme court may, following the filing of a formal complaint or a petition by the commission, prohibit a judge or court commissioner from exercising the powers of a judge or court commissioner pending final determination of the proceedings.

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

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

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

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

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