the witness. The trial court's refusal to permit defense counsel to make use of a transcript of grand jury testimony, which had been used by a grand jury member to refresh his memory in testifying as to inconsistencies in the testimony of a witness who had also testified before the grand jury, was proper, since defense counsel, if he believed that there was other testimony of such witness before the grand jury which would explain away the inconsistent testimony, as established by the questions and answers read into the record from the transcript, had the right to ask such grand jury member, or any other grand jury member, as to the existence of such other testimony. State v. Krause, 260 W 313, 50 NW (2d) 439.

255.22 History: R. S. 1849 c. 97 s. 19; R. S. 1858 c. 118 s. 20; R. S. 1878 s. 2556; Stats. 1898 s. 2556; 1925 c. 4; Stats. 1925 s. 255.28; 1953 c. 280 s. 26; Stats. 1953 s. 255.22.

255.23 History: R. S. 1849 c. 97 s. 11; R. S. 1858 c. 118 s. 12; R. S. 1878 s. 2557; Stats. 1898 s. 2557; 1925 c. 4; Stats. 1925 s. 255.29; 1953 c. 280 s. 26; Stats. 1953 s. 255.23.

255.24 History: R. S. 1849 c. 97 s. 34; R. S. 1858 c. 118 s. 35; 1859 c. 91 s. 2; R. S. 1878 s. 2560; Stats. 1898 s. 2560; 1901 c. 93 s. 1; Supl. 1906 s. 2560; 1923 c. 307 s. 18; 1925 c. 4; Stats. 1925 s. 255.30; 1929 c. 286; 1953 c. 280 s. 26; Stats. 1953 s. 255.24.

Revisers' Note, 1878: Section 35, chapter 118, R. S. 1878, as amended by section 2, chapter 91, Laws 1859, amended to require certificates to be countersigned. Frauds have been perpetrated on the county for the want of this safeguard. So much of chapter 225, Laws 1877, as directs the treasurer to pay for such certificates as included.

255.25 History: 1877 c. 225; R. S. 1878 s. 2561; Stats. 1898 s. 2561; 1903 c. 126 s. 1; Supl. 1906 s. 2561; 1907 c. 617; 1919 c. 76; 1923 c. 307 s. 19; 1925 c. 4; Stats. 1925 s. 255.31; 1945 c. 146; 1949 c. 498; 1953 c. 280 s. 26; Stats. 1953 s. 255.25; 1955 c. 187; 1961 c. 495.

The circuit court may dismiss from attendance upon it for a limited and specified time a juror summoned for service at a term without finally discharging him from other duties; a juror so excused is not entitled to per diem fixed by statute for jury service. 17 Atty. Gen. 33.

A county board has no authority to decrease the statutory mileage allowance of jurors. 38 Atty. Gen. 571.

A county can pay a juror only the per diem and mileage allowed. The court, however, may make arrangement for payment for meals under certain circumstances. 53 Atty. Gen. 120.

255.26 History: 1877 c. 225; R. S. 1878 s. 2562; Stats. 1898 s. 2562; 1903 c. 126 s. 2; Supl. 1906 s. 2562; 1919 c. 76; 1925 c. 4; Stats. 1925 s. 255.32; 1953 c. 280 s. 26; Stats. 1953 s. 255.26.

CHAPTER 256.

General Provisions Concerning Courts of Record, Judges, Attorneys and Clerks.

256.01 History: 1848 p. 21 s. 6; R. S. 1849 c. 87 s. 1; R. S. 1858 c. 117 s. 7; R. S. 1858 c. 119 s. 1; R. S. 1878 s. 2564; Stats. 1898 s. 2564; 1919 c. 93 s. 6; 1925 c. 4; Stats. 1925 s. 256.01.

Revisers' Note, 1878: Section 1, chapter 119, R. S. 1858, omitting the declaration that courts having a seal are courts of record; each court of record, intended to be such, having been so declared, adding a fourth subdivision to express, generally, powers of judges covering section 6, judiciary act of 1848, section 7, chapter 117, R. S. 1858, and others.

On judicial power generally see notes to sec. 2, art. VII.

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

256.02 History: 1848 p. 20 s. 3; 1848 p. 21 s. 6; R. S. 1849 c. 87 s. 1; R. S. 1858 c. 117 s. 7; R. S. 1858 c. 119 s. 1; R. S. 1878 s. 2419, 2564; Ann. Stats. 1889 s. 2419, 2564; Stats. 1898 s. 2419, 2564; 1903 c. 407 s. 1, 2; 1913 c. 592 s. 2; 1913 c. 705; Stats. 1913 s. 113.02, 2523—22, 2564 sub. 4; 1917 c. 651; 1919 c. 93 s. 4, 5, 6; Stats. 1919 s. 2564m; 1923 c. 134; 1925 c. 4; Stats. 1925 s. 256.02; 1929 c. 32; 1929 c. 262 s. 18; 1943 c. 180; 1947 c. 584; 1951 c. 206; 1961 c. 495; 1967 c. 276 s. 39.

Editor's Note: Ch. 93, Laws 1919, revised the statutes as to official oaths and bonds. The bill was No. 2-S (by the revisor) and had many notes. A long and learned note followed sec. 4 of the bill which amended 256.02. That note, with some deletions, is printed in the Wis. Annotations, 1930. Its value is historic.

The official oath to which a circuit judge subscribes under 256.02 (1) does not affirm the present existence of a fact but relates to future conduct and is a promissory oath, the violation of which does not constitute perjury or grounds for impeachment. State v. McCarthy, 255 W 234, 38 NW (2d) 679.

256.025 History: 1959 c. 405; Stats. 1959 s. 256.025; 1969 c. 253.

256.03 History: R. S. 1849 c. 85 s. 12; R. S. 1849 c. 86 s. 27; R. S. 1849 c. 87 s. 7; R. S. 1858 c. 117 s. 12, 45; R. S. 1858 c. 119 s. 7; R. S. 1878 s. 2565; Stats. 1898 s. 2565; 1925 c. 4; Stats. 1925 s. 256.03.

On certiorari to a justice of the peace the county court has ample power to compel him to amend his return and to administer punishment for refusal. Talbot v. White, 1 W 444.

One committed for refusal to obey an order for payment of suit money is entitled to jail liberties. In re Gill, 20 W 686.

After judgment of contempt, if it is shown that the party adjudged guilty failed to appear through mistake or excusable neglect the judgment may be vacated. Mead v. Norris, 21 W 310.

In supplementary proceedings a judgment debtor's wife may be required to disclose whether she has property of the husband under her control, and may be attached as for contempt on refusing. In re O'Brien, 24 W 547.

A receiver's title or ultimate right of possession to property cannot be tried in a proceeding for contempt. In re Day, 34 W 638.

The publication, in a newspaper, of articles charging a circuit judge who is a candidate for re-election with having been intentionally partial and corrupt in the trial of causes theretofore disposed of, and the circulation of such articles among the jurors and officers of the court at a term thereof, do not constitute a criminal contempt within the meaning of sec. 2565 (1), R. S. 1878, it not being charged that such act was committed in the presence of the court, or that the publication had been circulated in the court room. Neither is such publication within sec. 2565 (6), it not being alleged that the report was false or grossly inaccurate. Neither was the filing of a sworn statement by the defendants, that the charges in such articles were true, a contempt in the immediate presence of the court, such statement being so filed in response to an order to show cause why they should not be punished. State ex rel. Attorney General v. Circuit Court, 97 W 1, 72 NW 193.

There is a marked distinction in the remedies afforded and the procedure to be followed in each class between criminal contempts under ch. 117, Stats. 1898, and contempts in civil actions under ch. 150. The former have all the characteristics and incidents of a criminal prosecution in the name of the state, while the latter have those of a civil proceeding. Emerson v. Huss, 127 W 215, 106 NW 518.

The wilful disobedience of an order of the court by a party to the action may constitute either a civil or criminal contempt, and the form of the action in which it is brought determines its character. Vilter Mfg. Co. v. Humphrey, 132 W 587, 112 NW 1095.

A person fined for a criminal contempt cannot bring the order or judgment of conviction to the supreme court by appeal; that the contempt consisted in disobedience to an order made in a civil action does not affect the rule. State ex rel. Oshkosh T. Co. v. Goerlitz, 172 W 581, 179 NW 812. Compare Waukesha Roxo Co. v. Gehrz, 244 W 201, 12 NW (2d) 41.

The character of proceedings is determined by the relief sought. A proceeding brought to punish a plaintiff for misconduct during a trial and prosecuted by an attorney appointed therefor is in the nature of a proceeding for criminal contempt. Setting aside a verdict for plaintiff for having invited a juror to lunch is an abuse of discretion, where there was no intention to influence the juror; and the opposing party, knowing of said act, should have immediately informed the court of the occurrence, if he deemed it prejudicial; otherwise he lost his right to complain. A motion to set aside a verdict for misconduct of the plaintiff should show at what time the defendant first received knowledge of such misconduct. Wetzler v. Glassner, 185 W 593, 201 NW 740.

The refusal of an attorney to be sworn when directed to take the oath by the court in a special proceeding to investigate charges of ambulance chasing and claim adjusting brought by members of the bar was a "contempt in the immediate presence of the court." Rubin v. State, 194 W 207, 216 NW 513.

See note to 974.03, citing State v. Meese, 200 W 454, 225 NW 746, 229 NW 31.

A witness' perjury in the court's presence must be proved beyond reasonable doubt and must have tended to obstruct the administration of justice to constitute criminal contempt. State v. Meese, 200 W 454, 225 NW 746, 229 NW 31.

See note to 256.30, citing Appeal of Cichon, 227 W 62, 278 NW 1.

A defendant's violation of a temporary injunction, restraining him from selling spirits at higher than ceiling prices, was a criminal contempt, as a wilful disobedience of an order lawfully issued. Bowles v. Davidson, 246 W 242, 16 NW (2d) 802.

See note to 343.10, citing State v. Marcus, 259 W 543, 49 NW (2d) 447.

In its narrower and more usual sense, "contempt" is a despising of the authority, justice or dignity of the court. It is peculiarly the duty of an attorney to maintain the respect due to courts, and any breach of this duty is a contempt. O'Brien v. State, 261 W 570, 53 NW (2d) 534.

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

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

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

See note to 274.09, citing State ex rel. Jenkins v. Fayne, 24 W (2d) 476, 129 NW (2d) 147.

A proceeding for criminal contempt, where a warrant or attachment has issued, is a criminal action and defendant has the right to be released on bail. 30 Atty. Gen. 199.

Proceedings and punishment for contempt. Cordes, 13 MLR 150.

Contempt of court. Beilfuss, 31 WBB, No. 2.

Contempt. Stone, 9 WLR 166 and 278.

256.04 History: R. S. 1849 c. 87 s. 9; R. S. 1858 c. 119 s. 9; R. S. 1878 s. 2566; Stats. 1898 s. 2566; 1925 c. 4; Stats. 1925 s. 256.04.

During the cross-examination of one of defendant's witnesses counsel for plaintiff excepted to each remark of the court, who interrupted because he regarded the cross-examination as unduly severe and unfair. After being instructed to proceed counsel excepted to "the undue interference" of the court. The conduct of counsel constituted a contempt which could be punished summarily. Rubin v. State, 192 W 1, 211 NW 926.

Contempt proceedings, commenced by the issuance of an order based on an affidavit requiring the defendant to show cause why he should not be punished as for contempt for violation of the injunction and notifying him of the accusation, and giving him 2 months in which to make his defense, satisfied 256.04. Bowles v. Davidson, 246 W 242, 16 NW (2d) 802.

Where proceedings in a divorce case were being held in the courtroom, with both parties represented by counsel and the defendant present in person and witnesses being examined concerning the divorce case, and the court, without any suspension or adjournment, made inquiry into alleged mistreatment of a witness who had testified at a previous hearing, the proceedings, including such inquiry, were proceedings before the court, and an attorney's contemptuous behavior toward the court during such inquiry was committed "during its sittings, in its immediate view and presence," so that the court had jurisdiction under 256.03 (1) and 256.04, to adjudge a contempt and to punish such attorney summarily. The contemnor was not entitled to a trial under 256.07. O'Brien v. State, 261 W 570, 53 NW (2d) 534.

The provision of 256.04, requiring an adjournment to one accused of a contempt without the presence of the court, cannot be circumvented by requiring the accused to answer in the court's presence whether he will now obey a prior court order, and then finding that his negative answer constitutes a contempt occurring in the presence of the court. The judge who issued the disobeyed order or process should give consideration to whether he should take the discretionary step of disqualifying himself in order to permit another judge to try the contempt issue. State v. Ramsay, 16 W (2d) 154, 114 NW (2d) 118.

256.05 History: R. S. 1849 c. 87 s. 10; R. S. 1858 c. 119 s. 10; R. S. 1878 s. 2567; Stats. 1898 s. 2567; 1925 c. 4; Stats. 1925 s. 256.05.

256.06 History: R. S. 1858 c. 119 s. 8; R. S. 1878 s. 2568; Stats. 1898 s. 2568; 1925 c. 4; Stats. 1925 s. 256.06.

Power to punish for contempt should be used sparingly and not arbitrarily, capriciously or oppressively. State v. Meese, 200 W 454, 225 NW 746, 229 NW 31.

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

256.07 History: R. S. 1849 c. 87 s. 11, 12; R. S. 1858 c. 119 s. 11, 12; R. S. 1878 s. 2569; Stats. 1898 s. 2569; 1925 c. 4; Stats. 1925 s. 256.07.

An assertion on appeal that the contemnor's alleged conduct should have been tried under 256.07 must be rejected where throughout the proceeding the parties asserted that civil contempt was involved. Upper Lakes Shipping v. Seafarers' Int. Union, 23 W (2d) 494, 128 NW (2d) 73.

256.08 History: R. S. 1849 c. 87 s. 3; R. S. 1858 c. 119 s. 3; R. S. 1878 s. 2570; Stats. 1898 s. 2570; 1925 c. 4; Stats. 1925 s. 256.08.

A circuit judge may sentence a prisoner convicted before his predecessor. Pegalow v. State, 20 W 61.

A trial court may, after a change of judges, strike out a bill of exceptions which has been improperly settled. Oliver v. Town, 24 W 512.

Where, in an action brought to set aside an order of the public service commission entered in proceedings for the municipal acquisition of a utility, additional evidence is taken on the trial, the matter is remanded to the commission, the commission's report thereon is made to the court, and the trial judge dies without having heard arguments or decided the issues, the judge appointed to fill the vacancy has jurisdiction to proceed to a decision of the issues on the existing record, without taking evidence. State ex rel. Pardeeville E. L. Co. v. Sachtjen, 245 W 26, 13 NW (2d) 538.

The fact that a trial was begun before a judge whose term expired prior to its conclusion will not preclude his successor from trying the cause, but he must try it de novo. A judge who did not hear the evidence cannot render a valid judgment in a cause notwithstanding the testimony may have been written down and preserved; and he cannot make any finding of fact in a cause tried before his predecessor; but a successor judge may complete any acts uncompleted by his predecessor where they do not require the successor to compare and weigh testimony; and if the facts are stipulated or uncontroverted, the successor judge is entitled to base findings thereon. Cram v. Bach, 1 W (2d) 378, 83 NW (2d) 877.

256.09 History: R. S. 1849 c. 87 s. 4; R. S. 1858 c. 119 s. 4; R. S. 1878 s. 2571; Stats. 1898 s. 2571; 1925 c. 4; Stats. 1925 s. 256.09.

256.10 History: R. S. 1849 c. 87 s. 5; R. S. 1858 c. 119 s. 5; R. S. 1878 s. 2572; Stats. 1898 s. 2572; 1925 c. 4; Stats. 1925 s. 256.10.

A term does not end by failure to adjourn from day to day but continues until the court terminates it by affirmative judicial act, or until the next term. State ex rel. Barber v. McBain, 102 W 431, 78 NW 602.

It is presumed that a term was adjourned prior to entering upon the business of a new term which succeeded it. Cooper v. Granger, 129 W 50, 108 NW 193.

256.12 History: R. S. 1849 c. 87 s. 13, 14; R. S. 1858 c. 119 s. 13, 14; R. S. 1878 s. 2574; Stats. 1898 s. 2574; 1925 c. 4; Stats. 1925 s. 256.12; 1965 c. 252.

256.13 History: 1913 c. 286; Stats. 1913 s. 2574m; 1917 c. 3; 1925 c. 4; Stats. 1925 s. 256.13.

256.13, Stats. 1945, is a special statute and is controlling over other and inconsistent general provisions as to adjournment. 36 Atty. Gen. 196.

256.14 History: R. S. 1849 c. 87 s. 17; R. S. 1858 c. 119 s. 18; R. S. 1878 s. 2575; 1889 c. 127; Ann. Stats. 1889 s. 2575, 2575a; Stats. 1898 s. 2575; 1925 c. 4; Stats. 1925 s. 256.14.

Courts possess the inherent power to so regulate the admission of the public to the court room that it will not interfere with the administration of justice. Bloomer v. Bloomer, 197 W 140, 221 NW 734.

256.14 and 252.155 will not be construed as depriving courts of their inherent power to take certain evidence in camera where the rights of parties, or witnesses, cannot otherwise be protected. State ex rel. Ampco Metal, Inc. v. O'Neill, 273 W 530, 78 NW (2d) 921.

256.15 History: R. S. 1849 c. 87 s. 18; R. S. 1858 c. 119 s. 19; 1869 c. 15 s. 1; R. S. 1878 s. 2576; 1879 c. 194 s. 2 sub. 19; 1885 c. 142; Ann. Stats. 1889 s. 2576; 1891 c. 377; 1893 c. 69; Stats. 1898 s. 2576; 1925 c. 4; Stats. 1925 s. 256.15; Sup. Ct. Order, 25 W (2d) vi; 1969 c. 255 s. 64.

Apart from express statutory prohibition, a court has no authority to hear causes and render judgment on a legal holiday. Appeal from a judgment so rendered does not waive the objection. Lampe v. Manning, 38 W 673.

When any contract matures on a Sunday or legal holiday it will be held to mature on the next secular day. Siegbert v. Stiles, 39 W 533.

Sec. 2576, R. S. 1878, as amended, does not forbid the performance of ministerial acts on a legal holiday, as issuing a summons. Weil v. Geier, 61 W 414, 21 NW 246.

A deposition taken in another state on a day which is a legal holiday in this state is not inadmissible under sec. 2576, R. S. 1878, as amended. Green v. Walker, 73 W 548, 41 NW 534.

The approval by a court commissioner of the bond of an assignee in a voluntary assignment, if it be a judicial act, though done on a legal holiday, is valid. Spalding v. Bernhard, 76 W 368, 44 NW 643.

256.16 History: 1921 c. 542; Stats. 1921 s. 2576m; 1925 c. 4; Stats. 1925 s. 256.16.

Veterans must be granted a full day's leave with pay on Memorial Day regardless of whether or not other employes are required to work on that day. 45 Atty. Gen. 140.

256.17 History: 1861 c. 58, 243; 1862 c. 248; 1872 c. 32; R. S. 1878 s. 2577; 1879 c. 146; Ann. Stats. 1889 s. 2577; 1893 c. 271; Stats. 1898 s. 2577; 1913 c. 761; 1919 c. 671 s. 34; 1921 c. 249; 1921 c. 590 s. 30; 1923 c. 307 s. 20; 1925 c. 4; Stats. 1925 s. 256.17; 1931 c. 17; 1933 c. 41; 1941 c. 39; 1945 c. 190, 232, 506; 1949 c. 196; 1951 c. 247 s. 50; 1963 c. 506 s. 8.

Under 256.17, Stats. 1937, the governor may designate a day of thanksgiving different from that designated by the president, and both days are legal holidays. 28 Atty. Gen. 605.

256.175 History: 1957 c. 97; Stats. 1957 s. 256.175.

256.18 History: R. S. 1849 c. 87 s. 19; R. S. 1858 c. 119 s. 20; R. S. 1878 s. 2578; Stats. 1898 s. 2578; 1925 c. 4; Stats. 1925 s. 256.18.

The proper remedy in case of illegal pleadings is to move to strike from the files. Downer v. Staines, 5 W 159.

256.19 History: R. S. 1849 c. 87 s. 20; R. S. 1858 c. 119 s. 21; R. S. 1878 s. 2579; Stats. 1898 s. 2579; 1925 c. 4; Stats. 1925 s. 256.19.

The interest which disqualifies a judge must be pecuniary. Hungerford v. Cushing, 2 W 397.

The fact that a circuit judge had been of counsel for one of the parties to a suit does not disqualify him from executing a mandate of the supreme court. State ex rel. Richard F. Veeder v. Collins, 5 W 339.

Where an application is made for a change of venue because the judge is interested as a taxpayer the application should be granted. Where the interest of a judge is minute, if no objection is taken or if it is necessary for him to take jurisdiction to prevent a failure of justice, he is competent. Jefferson County v. Milwaukee County, 20 W 139.

The fact that a judge before whom an action is brought against a corporation was one of its original incorporators and directors is not ground for change of venue if it does not appear that he was interested at or after commencement of action. Brown v. La Crosse G. L. & C. Co. 21 W 51.

A judge is disqualified to hear a partition action where he has acted as an attorney for one of the parties in a previous partition proceeding which related to the same property and in which some of the parties were the same, although the first suit was discontinued before the new action was begun, and he was never consulted in such action. State ex rel. Rowell v. Dick, 125 W 51, 103 NW 229.

An order entered in violation of sec. 2579, Stats. 1898, is void and subject to collateral attack. McIntosh v. Bowers, 143 W 74, 126 NW 548.

In a proceeding brought to the supreme court by certiorari to review an assessment of an income tax upon the salary of a circuit judge, a justice of the supreme court was not disqualified from participating in a decision of the case because of a collateral or indirect interest. State ex rel. Wickham v. Nygaard, 159 W 396, 150 NW 513.

A circuit judge was not disqualified to try a stockholder's derivative action merely because the judge's wife owned preferred stock in a corporation, which was not a party to the action but was a subsidiary of a corporate defendant. Goodman v. Wisconsin Elec. Power Co. 248 W 52, 20 NW (2d) 553.

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

Disqualification of a judge for "interest" under 256.19, Stats. 1967, requires that such interest be pecuniary and real. Defendant could not successfully invoke 256.19 on the ground that the trial judge should have disqualified himself from presiding at the jury trial because of "interest", no claim of bias, prejudice, or pecuniary interest in the outcome of the trial being asserted, and his prior knowledge judicially acquired not constituting "interest" within the meaning of the statute. State v. Knoblock, 44 W (2d) 130, 170 NW (2d) 781.

The interest of a circuit judge as depositor in a defunct bank is probably such as would disqualify him from presiding in proceedings to liquidate such bank. 26 Atty. Gen. 38.

Under 256.19, Stats. 1967, a judge of a court of record, in the absence of consent of the par-

ties, is disqualified from hearing or determining or issuing any order in any criminal action in which the information was signed by him as district attorney or by a deputy in his behalf. 57 Atty. Gen. 81.

256.20 History: R. S. 1849 c. 87 s. 21; R. S. 1858 c. 119 s. 22; R. S. 1878 s. 2580; Stats. 1898 s. 2580; 1925 c. 4; Stats. 1925 s. 256.20.

A justice of the supreme court who heard a general demurrer to the complaint while he was a circuit judge is disqualified to sit at the hearing in the supreme court on appeal from final judgment where the questions in the 2 courts are substantially the same. Case v. Hoffman, 100 W 314, 75 NW 945. See also 84 W 438, 72 NW 396.

256.21 History: R. S. 1849 c. 87 s. 22; R. S. 1858 c. 119 s. 23; R. S. 1878 s. 2581; Stats. 1898 s. 2581; 1925 c. 4; Stats. 1925 s. 256.21; Sup. Ct. Order, 7 W (2d) v; 1961 c. 495.

256.22 History: R. S. 1849 c. 87 s. 24; R. S. 1858 c. 119 s. 25; 1876 c. 20; R. S. 1878 s. 2582; Stats. 1898 s. 2582; 1925 c. 4; Stats. 1925 s. 256.22; 1961 c. 495; 1963 c. 407; 1965 c. 617; 1967 c. 276 s. 39.

Making a voluntary assignment is not an action and the assignor and the assignee are not parties litigant in a matter pending before the county judge. Hammel v. Schuster, 65 W 669, 27 NW 620.

Sec. 2452 and 2582, Stats. 1898, does not prevent the appointment of a county judge to assist the district attorney in the prosecution of a criminal action. Bliss v. State, 117 W 596, 94 NW 325.

256.22 (1), Stats. 1965, which prohibits the drafting of legal papers and the giving of legal advice by court personnel, is applicable to Milwaukee county. 55 Atty. Gen. 5.

256.23 History: 1903 c. 204 s. 1; Supl. 1906 s. 2582a; 1925 c. 4; Stats. 1925 s. 256.23.

256.24 History: R. S. 1849 c. 87 s. 23; R. S. 1858 c. 119 s. 24; R. S. 1878 s. 2583; Stats. 1898 s. 2583; 1925 c. 4; Stats. 1925 s. 256.24; 1961 c. 495.

Revisers' Note, 1878: Section 24, chapter 119, R. S. 1858, extended to county judges and court commissioners as equally within the reason of the section.

It is doubtful whether the rule that no civil action lies for misconduct or delinquency in the performance of judicial duties is not changed, in certain cases, by this statute. Lefferts v. Calumet County, 21 W 688, 693.

256.25 History: 1889 c. 436; Ann. Stats. 1889 s. 2583b; Stats. 1898 s. 2583a; 1925 c. 4; Stats. 1925 s. 256.25.

256.26 History: R. S. 1849 c. 87 s. 25; R. S. 1858 c. 119 s. 26; R. S. 1878 s. 2584; Stats. 1898 s. 2584; 1925 c. 4; Stats. 1925 s. 256.26.

256.27 History: R. S. 1849 c. 87 s. 27, 28; R. S. 1858 c. 119 s. 28, 31; 1860 c. 19; R. S. 1878 s. 2585; Stats. 1898 s. 2585; 1925 c. 4; Stats. 1925 s. 256.27; Court Rule V s. 1; Court Rule VIII; Sup. Ct. Order, 212 W vii.

Written authority to appear as counsel or attorney is not required. Walker v. Rogan, 1 W 597.

The appearance of an attorney and his acts in the trial of a cause are presumed to be by authority. Shroudenbeck v. Phoenix Ins. Co. 15 W 632.

In an action upon a note and mortgage the appearance of an attorney is sufficient prima facie evidence of his authority. The fact that plaintiff's attorney offered no proof at the trial as to his retainer and declined to state for whom he appeared will not sustain a conclusion that he was guilty of unlawful maintenance. Andrew v. Thayer, 30 W 228.

A party who denies the authority of an attorney has the burden of proof. Thomas v. Steele, 22 W 207; Schlitz v. Meyer, 61 W 418, 21 NW 243.

An attorney for appellant may sign a notice of appeal from the county to the circuit court. Bovee v. Johnson, 130 W 447, 110 NW 212.

An attorney of a party has the right to inspect the transcribed testimony of his client, taken in an adverse examination, and advise his client whether or not he ought to sign it; and if he finds defects, to point them out. Zeitlow v. Sweger, 179 W 462, 192 NW 47.

An order of substitution should be made when defendant changes attorneys on taking an appeal. Fidelity & D. Co. v. Madison, 201 W 609, 231 NW 170.

An attorney may not issue a summons without the authority of the client. Peplinsky v. Billings, 213 W 651, 252 NW 342.

As to what constitutes a general appearance, see Evans v. Orgel, 221 W 152, 266 NW 176.

A general appearance waives all objections to defects in the form or service of process. State ex rel. Walling v. Sullivan, 245 W 180, 13 NW (2d) 550.

A client's application to the court to order a substitution of attorneys in an action, on proper terms, is a consent by the client to be bound by the court's determination, within the limits of judicial discretion and subject to appeal, and to pay such amount as the court may order to be paid to the replaced attorney. The client cannot thereafter, without the consent of such attorney, make this particular controversy moot by a settlement of the principal action or, for other unilateral reasons, abandon, to the attorney's prejudice, the client's effort to procure a substitution of attorneys, but the court may still proceed to a determination of the terms of substitution, and its order, within the limits aforesaid, binds the client to compliance. Froedtert G. & M. Co. v. Peter P. Woboril, Inc. 265 W 456, 61 NW (2d) 855.

256.27 (3), relating to orders for the substitution of an attorney for a party to an action, recognizes that the court retains jurisdiction in such action to protect the former attorney in his lien or for his fees and disbursements, so that such party was not entitled to institute a separate and independent action to recover an alleged overpayment of fees to his former attorney, even though such action was instituted in the same court. Touchett v. Sutherland, 274 W 35, 79 NW (2d) 80.

Where an attorney employed to perform specific legal services is discharged without cause or fault on his part, before he has fully performed, the discharge constitutes breach of contract of employment and makes the client

liable to respond in damages, which rule applies to contingent-fee contracts as well as to fixed-fee contracts. Tonn v. Reuter, 6 W (2d) 498, 95 NW (2d) 261.

256.28 History: 1861 c. 189 s. 1 to 3; 1870 c. 79; 1875 c. 218 s. 4; R. S. 1878 s. 2586; 1881 c. 144; 1885 c. 63; Ann. Stats. 1889 s. 2586; 1891 c. 310; 1897 c. 174; Stats. 1898 s. 2586; 1903 c. 19 s. 1 to 3; 1903 c. 84 s. 1; Supl. 1906 s. 2586; 1911 c. 196; 1913 c. 192; 1913 c. 772 s. 6, 13; 1915 c. 454; 1917 c. 156, 383; 1919 c. 16; 1919 c. 362 s. 32; 1919 c. 649 s. 3; 1921 c. 448; 1925 c. 4; Stats. 1925 s. 256.28; 1927 c. 314; 1931 c. 366; 1933 c. 60; 1935 c. 378; Sup. Ct. Order, 229 W vi; 1947 c. 6; 1947 c. 9 s. 31; 1949 c. 412; 1951 c. 319 s. 220a; 1953 c. 61; 1955 c. 145; Sup. Ct. Orders of January 11 and 28, 1960; 1961 c. 316; Sup. Ct. Order, 17 W (2d) xvii; 1965 c. 433 s. 121; Sup. Ct. Order, 31 W (2d) v; 1967 c. 43; 1967 c. 291 s. 14.

Revisers' Note, 1878: Sections 1, 2 and 3, chapter 189, Laws 1861, chapter 79, Laws 1870, and section 4, chapter 218, Laws 1875, combined. Chapter 300, Laws 1877, is omitted. * * *.

Revisers' Note, 1898: Section 2586, Ann. Stats. 1889, as amended by chapter 310, Laws 1891, condensed and slightly extended so as to provide for the slight expense of stationery and books. Quiz books have been found necessary to properly conduct oral examinations. The change in subdivision 2 is suggested in order to secure protection to courts and suitors, and is based upon like provision in the New York code.

On judicial power generally see notes to sec. 2, art. VII; on jurisdiction of supreme court see notes to sec. 3, art. VII; and on regulation of attorneys see notes to 256.29.

1. Admission to practice.
2. Disciplinary action.

1. Admission to Practice.

It was jurisdictional error for a court to admit to practice in the circuit court as an attorney one who has been admitted to practice in the supreme court of another state but who has not actually practiced in such state or territory at least 2 years thereafter although he may have practiced in still another state for 2 years by virtue of admission in a lower court in the latter state. Such error may be corrected at any time by expunging the attorney's name from the rolls, either upon the court's own motion or upon the motion of a member of the bar or of the bar association of the county. Such an association may appeal from an order denying the motion. Vernon County Bar Asso. v. McKibbin, 153 W 350, 141 NW 283.

Secs. 2586 and 2587, Stats. 1917, were not violated by an indemnity contract or policy giving to an insurance company control of the defense in a personal injury action. Glatz v. General A. F. & L. A. Corp. 175 W 42, 183 NW 683.

The supreme court must determine what is satisfactory proof of the actual practice required of an attorney of a sister state before admission to the bar of this state, and such function cannot be delegated. The certificate of the judge of another state before whom an applicant for admission to the bar has practiced is not conclusive proof of the sufficiency of the required practice. In re Pierce, 189 W 441, 207 NW 966.

See note to sec. 1, art. I, on equality, citing In re Cannon, 206 W 374, 240 NW 446.

2. Disciplinary Action.

Defendant was properly disbarred for attempting to deceive the court in which a judgment had been rendered against him by presenting affidavits known to him to be false as to the service of notice of appeal. Flanders v. Keefe, 108 W 441, 84 NW 878.

An attorney's license to practice will be revoked upon proof that he falsely claimed, when applying for admission, that he was a practicing attorney in good standing in another state. Application of State Board of Bar Examiners, 175 W 66, 184 NW 379.

The requisite qualification, that one holding the office of an attorney at law shall be of good moral character, insofar as it relates to the discharge of the duties and responsibilities of an attorney at law, is a continuing qualification. In re Stolen, 193 W 602, 216 NW 127.

Courts will defer to reasonable legislative regulation of disbarment proceedings, but such deference is one of comity or courtesy rather than an acknowledgment of legislative power. State v. Cannon, 196 W 534, 221 NW 603.

Defendant's failure to object because plaintiff's attorney represented him in a former related action arising from the same automobile collision does not condone the attorney's offense, in determining the attorney's right to practice. Michel v. McKenna, 199 W 608, 227 NW 396.

Personal solicitation by an attorney of 3 cases and taking of 10 cases from known ambulance chasers would not alone warrant disbarment. A statement submitted by an attorney listing information as basis for affidavits on charge of conspiracy to defame did not warrant disbarment. Courts must judge an attorney's alleged misconduct from facts appearing at the time. An attorney who resisted an ambulance chasing investigation by commencing an action against investigators and filing an affidavit for adverse examination attacking the investigators' honesty and motives should be fined for unprofessional conduct. State v. Rubin, 201 W 30, 229 NW 36.

Contracts between an attorney and client are subject to closest scrutiny, and, if unfair, are set aside on principles governing conduct of trustees generally. An attorney has no right to enter into an extortionate contract with his client to sell stock for $1200 and withhold $600 as compensation. State v. Barto, 202 W 329, 232 NW 553.

In disbarment proceedings, the public interest is the primary question. An attorney who twice offered money to a sheriff to obtain for his client a meat contract for the county jail was subject to suspension. State v. Kern, 203 W 178, 233 NW 629.

Where the evidence showed that the defendant was guilty of perjury in attempting to probate a spurious will and of fraud, he was subject to disbarment. State v. Stetson, 203 W 657, 234 NW 704.

An attorney, who received and converted to his own use more than $2,000 belonging to an insane woman, neither returning it nor accounting to the court for it, was subject to disbarment. State v. Andrews, 206 W 615, 240 NW 147.

Where defendant, acting as executor and trustee of decedent's estate, had failed to close administration in 6 years and failed for 20 years to render an account, the referee's finding that defendant had been grossly negligent and derelict in his duties was warranted. State v. Ingram, 212 W 142, 248 NW 915.

The evidence in this case justified the suspension of the defendant from the practice of law for a period of one year and the specification of conditions upon which he may apply for reinstatement. State v. Kuenzli, 212 W 296, 249 NW 511.

An unreversed judgment of conviction of an attorney for crime involving moral turpitude prima facie establishes his guilt and his unfitness to practice law, but is not conclusive in disbarment proceedings on any grounds of res adjudicata. State v. O'Leary and Sullivan, 207 W 297, 241 NW 621; 212 W 314, 245 NW 519.

The recommendations of the referee, which were adopted by the court, justified disbarment of the defendant for a period of 2 years, and thereafter until his license to practice law should be restored pursuant to specified conditions. State v. Rogers, 226 W 39, 275 NW 910.

Misleading a client by making him believe that services are being rendered when they are not is a violation of duty to the client and calls for discipline. State v. Bonisz, 231 W 157, 285 NW 386.

On a charge of an attorney's overreaching a client and making excessive charges for services, the presumption is that unfairness or invalidity attaches to a contract for compensation executed by attorney and client after the establishment of the fiduciary relation, and the burden is on the attorney to show the reasonableness and fairness of such a transaction. State v. MacIntyre, 238 W 406, 298 NW 200.

A count charging an attorney with suborning perjury and obstructing justice involves moral turpitude such that proof must be clear and satisfactory. On a count of charging an attorney with unethical conduct in the preparation and use of false affidavits made by a client denying the keeping of 2 sets of pay-roll books to defraud the client's compensation insurer, the evidence warranted the findings and recommendations of exoneration of the attorney. On a count charging an attorney with abusing the processes of the courts and thereby taking advantage of numerous poor persons, the evidence warranted the findings and recommendations of exoneration. State v. Treis, 245 W 479, 15 NW (2d) 309.

See note to sec. 10, art. VII, citing State v. McCarthy, 255 W 234, 38 NW (2d) 679.

An attorney who failed to preserve inviolate the secrets of his client, and who drafted a will in accordance with his own wishes rather than those of his client, and exercised improper influence and gave erroneous advice and who prepared the will and attested to the testator's competency when he had grave doubts thereof and a belief that the testator had come under undue influence, and who signed the customary written form adopted in support of admission of the will to probate and then, on the trial contesting the validity of the will, testified that at the time of its execution he did not think that the testator was competent and did believe that the testator was acting under undue influence, is subject to disbarment as unqualified and unfit to continue as a member of the bar. State v. Nowicki, 256 W 279, 40 NW (2d) 377.

The test to be applied in a disbarment proceeding against an attorney on charges of unprofessional conduct toward a client is whether such attorney is so lacking in moral sense and appreciation of the relation of attorney and client that he should not be permitted in the public interest to continue in the practice of law. An attorney may not at the threshold of an important lawsuit employ his influence to exact from his client a contract for an increased compensation, particularly where the circumstances are such as to suggest to the client that he may stand on the morrow without the help of counsel in his defense against a claim of some consequence. State v. Markey, 259 W 527, 49 NW (2d) 437.

The primary concern of the supreme court in a disbarment proceeding is whether the defendant's misconduct proves him unfit to be intrusted with the duties and responsibilities of an attorney in his relation to the public. In a disbarment proceeding against an attorney guilty of irregularities in handling certain estate funds, property and accounts, evidence as to defendant's loss of substantial fees because of disallowance thereof by the county court, as to the defendant's having been required to pay $13,000 in the settlement of claims which might not have been established if a proper accounting had been possible, as to the defendant's consequent financial impoverishment, as to the defendant's loss of practice and resignation from the public position, as to the publicity resulting from the defendant's misconduct, and as to the defendant's rehabilitation, warranted the referee's finding that the defendant had been sufficiently punished, and warranted the referee's recommendation that the defendant be reprimanded but not suspended or disbarred. State v. Clarke, 262 W 594, 55 NW (2d) 888.

The supreme court may not treat lightly the recommendation of a referee in a disbarment proceeding. State v. Alderman, 270 W 516, 71 NW (2d) 268.

The plaintiff attorney had no private right of action against the defendant law firm for the restraint of alleged mere unprofessional practices or conduct, the remedy for a breach of professional ethics being that prescribed by 256.28 (8). Padway v. Goldberg, 275 W 54, 80 NW (2d) 919.

If, in fact, an attorney-legislator is advocating a client's cause as a lawyer, he must make such fact plain to the public official with whom he deals, and he must not rely on a mere assumption that his attorneyship is apparent. Deliberately to arrange for another attorney to appear alone at a hearing before the pardon counsel, and then to appear se-

cretly before the governor as an advocate, is unprofessional conduct by a lawyer. State v. Catlin, 2 W (2d) 240, 85 NW (2d) 857.

The State Bar has no power to discipline or to disbar any member, since such power has been reserved to and not delegated by the supreme court, and the procedure under 256.28 for filing complaints for discipline or disbarment in the supreme court is unaffected by the rules of the State Bar. In re Integration of Bar, 5 W (2d) 618, 93 NW (2d) 601.

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

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

An attorney who failed to file state income-tax returns for certain years, after having been repeatedly notified by the department of taxation to do so, was guilty of unprofessional conduct, and he is censured and reprimanded and required to pay the initial $750 of the costs and expenses of the disciplinary proceeding. (Conflicting statement in State v. McKinnon, 263 W 413, overruled.) State v. Roggensack, 19 W (2d) 38, 119 NW (2d) 412.

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

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

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

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

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

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

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

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

256.29 History: 1909 c. 179; Stats. 1911 s. 2586a; 1925 c. 4; Stats. 1925 s. 256.29; 1927 c. 457; 1927 c. 473 s. 46.

On jurisdiction of the supreme court (general) see notes to sec. 3, art. VII; and on communications to attorneys see notes to 885.22.

It is libelous per se to charge an attorney who is a public officer with entertaining views contrary to those enjoined by his official oath and by his oath required by sec. 2568a, Stats. 1919. Hanson v. Temple, 175 W 349, 185 NW 225.

An attorney should not withdraw from the trial of an action for the reason that he is dissatisfied with the rulings of the trial judge. Rohr v. Chicago, N. S. & M. R. Co. 179 W 106, 190 NW 827.

A lawyer should be a witness for his client only when that is essential to the ends of justice. When his testimony extends to more than formal matters he should leave the trial to other counsel. Roys v. First Nat. Bank, 183 W 10, 197 NW 237.

The canons of professional ethics among attorneys, such as those adopted by the American Bar Association, embody statements of principles and rules accepted and acknowledged by reputable attorneys, and are recognized and applied by courts. The conduct of an attorney who, knowing that a competent reputable lawyer had been retained to represent an infant, induced the father, by extravagant statements as to the recovery he could secure, to entrust the case to him is censured; and after litigation which resulted in a recovery not substantially in excess of the amount

the first attorney had been offered by way of settlement, the full contract fee is awarded to the first attorney. Hepp v. Petrie, 185 W 350, 200 NW 857.

An attorney who alleges but offers no proof that the woman suing him for the value of domestic services had contracted to live in illicit relations with him, and that the services rendered by her as an incident to and a part of a course of illegal conduct between them, is guilty of misconduct, in violation of his oath under sec. 2586a, Stats. 1921. In re Richter, 187 W 490, 204 NW 492.

An attorney at law is an officer of the court with both public and private obligations; and an attorney counseling the court to pursue proceedings which resulted in the imprisonment of plaintiff is immune from liability where he was justified in so acting for his client and his action was in accordance with his oath. Langen v. Borkowski, 188 W 277, 206 NW 181.

The solicitation of business by attorneys, and the splitting of fees between the attorney and the agent or runner who actually approaches the prospective client, are professional misconduct of the gravest kind. State v. Kiefer, 197 W 524, 222 NW 795.

Evidence that an attorney engaged in ambulance chasing and charged unreasonable fees supported suspension for 2 years. State v. Cannon, 199 W 401, 226 NW 385.

An attorney appearing in related actions representing defendant in a prior action and plaintiff in present action was guilty of unprofessional conduct. Defendant cannot complain because plaintiff's attorney represented other defendant in previous action arising out of the same automobile collision. Michel v. McKenna, 199 W 608, 227 NW 396.

It was improper for one of plaintiffs' attorneys, knowing in advance that he was a necessary and material witness, to participate in the trial as attorney. Interior W. Co. v. Buhler, 207 W 1, 238 NW 822.

A lawyer who drafted a will, being an important witness upon the issue of undue influence, must have anticipated in advance of the trial that he would be a witness, and should have withdrawn from the litigation. Will of Cieszynski, 207 W 353, 241 NW 364.

It is a court's duty to see that the law profession is confined to professional service by professional means without seeking advantage for a client by device or intrigue. Rodenfels v. Fidelity & D. Co. 211 W 536, 248 NW 442.

It was unethical for an attorney who had no financial responsibility to borrow $3,500 from a client on an unsecured note, such conduct amounting to an overreaching of a credulous client. State v. Maddock, 234 W 441, 291 NW 347.

An attorney is subject to the rule that an agent who wrongfully obtains money from a third person is not absolved from liability to such third person even through he paid the money over to his principal. Scandrett v. Greenhouse, 244 W 108, 11 NW (2d) 510.

On professional responsibilities of lawyers see the Code of Professional Responsibility, 43 W (2d) ix-ixxvi-b.

See note to sec. 3, art. I, on limitations imposed by the Fourteenth Amendment, citing Eisenberg v. Boardman, 302 F Supp. 1360.

256.293 History: Sup. Ct. Order, 13 W (2d) xi; Stats. 1961 s. 256.293.

256.295 History: 1927 c. 400; Stats. 1927 s. 348.325; 1955 c. 86; 1955 c. 696 s. 248; Stats. 1955 s. 256.295.

256.30 History: 1861 c. 189 s. 4; R. S. 1878 s. 2587; Stats. 1898 s. 2587; 1909 c. 94; Stats. 1911 s. 2587m; 1925 c. 4; Stats. 1925 s. 256.30, 256.31; 1927 c. 458; 1931 c. 360; Stats. 1931 s. 256.30; 1943 c. 372; 1945 c. 13.

Revisers' Note, 1878: Section 4, chapter 189, Laws 1861, writing instead of the punishment by imprisonment, liability to punishment for contempt.

Where farmers petitioned the court for relief under the Frazier-Lemke act after completion of foreclosure proceedings, appeared in court and believed it was merely for the purpose of setting a date for a future hearing, and the spokesman stated that he represented only himself and then on inquiry by the court as to whether he represented the other farmers similarly situated and present in court, as their agent, replied, without insolence or disrespect that he would so represent the other farmers if they desired, and stated in response to other inquiries by the court that he was not licensed as an attorney and did not practice law, he was not guilty of contempt of court. Appeal of Cichon, 227 W 62, 278 NW 1.

Under 256.30 (2) a layman may not engage in a business which involves the rendering of "legal service" and then claim immunity because the giving of professional legal advice was incidental to his usual or ordinary business. State ex rel. Junior Asso. of Milwaukee Bar v. Rice, 236 W 38, 294 NW 550.

If a summons is issued and an appearance made in such a way as to constitute unauthorized practice of law, this does not make the action void or prevent the court from acquiring jurisdiction. Drugsvold v. Small Claims Court, 13 W (2d) 228, 108 NW (2d) 648. See also Littleton v. Langlois, 37 W (2d) 360, 155 NW (2d) 150.

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

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

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

An executor cannot handle probate proceedings unless he is an attorney or represented

by one. State ex rel. Baker v. County Court, 29 W (2d) 1, 138 NW (2d) 162.

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

An abstractor who is also a notary public renders legal service not incidental to his business by drafting deeds and mortgages. An isolated act of drafting legal instruments does not constitute practice of law. 2 Atty. Gen. 825.

An advertisement containing among other things, "All legal business done promptly and satisfactorily," is in violation of 256.31, Stats. 1925, prohibiting practice of law without a license therefor. 15 Atty. Gen. 117.

A collection agency or officer thereof not licensed to practice law may not prosecute claims of customers in justice court, either as agent of creditor or as assignee of creditor's claim without consideration other than agreement to share in the proceeds. Such activities constitute the practice of law under 256.30 (2), and one engaging in such business without being licensed to practice law may not claim immunity under 301.20 or otherwise. 34 Atty. Gen. 155.

See note to 218.02, citing 44 Atty. Gen. 236.

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

What constitutes the practice of law in tax matters. Lorinezi, 35 MLR 370.

Conveyancing as practice of law under 59.513. 41 MLR 481.

Safeguarding the administration of justice from illegal practice of law. Resh, 42 MLR 484.

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

Control of the practice of law and conveyancing. 1962 WLR 366.

256.31 History: 1943 c. 315; Stats. 1943 s. 256.31.

On the government of the state bar see Rules and By-Laws of the State Bar of Wisconsin (adopted by order of the supreme court, effective January 1, 1957, as amended to October 1, 1969).

On judicial power generally see notes to sec. 2, art. VII; and on jurisdiction of the supreme court (general) see notes to sec. 3, art. VII.

The acting governor, as an attorney at law, has no interest sufficient to entitle him to maintain an action to enjoin the publication of an act of the legislature authorizing the supreme court to provide by appropriate orders for the organization and government of a state bar association, of which all persons licensed to practice law in this state must be members, since he has sustained no injury as an attorney, and the act, even if published, will not affect any attorney until the court has made an order pursuant to its provisions. The acting governor, as an elector or a taxpayer, has no interest sufficient to entitle him to maintain an action to enjoin the publication of the act, since he cannot in any possible way sustain an injury from such act in his capacity as an elector or taxpayer. Goodland v. Zimmerman, 243 W 459, 10 NW (2d) 180.

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

Members of the state bar engaged in teaching law may be classified as active rather than inactive members according to its rules and by-laws. 50 Atty. Gen. 103.

256.32 History: R. S. 1849 c. 87 s. 29; R. S. 1858 c. 119 s. 32; R. S. 1878 s. 2588; Stats. 1898 s. 2588; 1911 c. 144; 1925 c. 4; Stats. 1925 s. 256.32; 1969 c. 255.

256.325 History: 1951 c. 335; Stats. 1951 s. 256.325; 1953 c. 539.

256.34 History: 1859 c. 21 s. 1; R. S. 1878 s. 2590; 1895 c. 25, 150; Stats. 1898 s. 2590; 1925 c. 4; Stats. 1925 s. 256.34; 1967 c. 276 s. 39.

Objection to a surety on the ground that he is a practicing attorney must be sustained by proof. Cothren v. Connaughton, 24 W 133.

The disqualification is not limited to cases in which the attorney is interested or where he proposes to become surety for his client. Gilbank v. Stephenson, 30 W 155.

Sec. 2590, R. S. 1878, being one which takes away a common right of the citizen, will be strictly construed. It did not, in its original form, extend to proceedings in justices' courts. The word "undertaking" means such instruments as are denominated undertakings in the statutes relating to courts of record, or at least to such securities as are so denominated in some other statute. The title of the original act was in relation to "undertakings and securities in certain cases," showing that its scope was limited. Stark v. Small, 72 W 215, 39 NW 359.

256.35 History: R. S. 1849 c. 90 s. 2; R. S. 1858 c. 136; R. S. 1878 s. 2591; Stats. 1898 s. 2591; 1925 c. 4; Stats. 1925 s. 256.35; Court Rule VI; Sup. Ct. Order, 212 W vii.

256.36 History: 1891 c. 204; Stats. 1898 s. 2591a; 1907 c. 314; 1925 c. 4; Stats. 1925 s. 256.36.

On application by a judgment debtor to apply his judgment upon that of his judgment creditor the equitable lien of the attorney of the judgment creditor is superior to the right of the judgment debtor. Gauche v. Milbrath, 105 W 355, 81 NW 487.

Where notice served correctly states that the claimant had given the attorney a lien upon the cause of action as security for fees, it was sufficient to prevent a settlement of the cause of action so as to defeat the lien. Smelker v. Chicago & N. W. R. Co. 106 W 135, 81 NW 994.

The assignment of a judgment is superior to the debtor's right to settle. Stanley v. Bouck, 107 W 225, 83 NW 298.

The client and his attorneys may stipulate in open court in a personal injury action that the compensation of the attorneys shall be

fixed by the court; and in fixing such compensation the court may apply his own knowledge as to the character and value of the services rendered. Rubekeil v. Bowman, 171 W 128, 176 NW 854.

A nonresident attorney properly taking part in the trial has the same right to an attorney's lien as a resident attorney. Liberty v. Liberty, 226 W 136, 276 NW 121.

The assignment of a judgment to an attorney as security for payment of his fees is not champerty. Ehrlich v. Frank Holton & Co. 228 W 676, 687, 280 NW 297.

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

A client has the right to compromise or even abandon his claim if he sees fit to do so, the attorney's remedy being enforcement of his contractual lien either under the terms of 256.36, Stats. 1967, or by a common-law action when a case is settled without regard to his rights under a contract with the client. Knoll v. Klatt, 43 W (2d) 265, 168 NW (2d) 555.

The charging lien of an attorney upon the proceeds of an action brought on behalf of his client is, as provided in 256.36, Stats. 1967, limited to payment for the services rendered in that particular action, and does not extend beyond so as to cover legal fees in another case or other claims of the attorney against the client unless otherwise agreed to. Freyer v. Mutual Benefit H. & A. Asso. 45 W (2d) 106, 172 NW (2d) 338.

256.37 History: 1907 c. 314; Stats. 1911 s. 2591m; 1925 c. 4; Stats. 1925 s. 256.37.

256.38 History: 1911 c. 480; Stats. 1911 s. 2591n; 1925 c. 4; Stats. 1925 s. 256.38.

A want of authority in the plaintiff's attorney to commence the action may be shown, and, when the matter has been properly drawn in issue in the course of the trial, neither party is confined to a motion to dismiss the action when a claim of settlement without the consent of the plaintiff's attorney is asserted under the statute. (Reinkey v. Wilkins, 172 W 515, distinguished.) Peplinsky v. Billings, 213 W 651, 252 NW 342.

256.39 History: R. S. 1878 s. 2592; Stats. 1898 s. 2592; 1925 c. 4; Stats. 1925 s. 256.39.

256.40 History: 1887 c. 367; 1889 c. 187; Ann. Stats. 1889 s. 2583a; Stats. 1898 s. 2592a; 1925 c. 4; Stats. 1925 s. 256.40; 1945 c. 191; 1953 c. 163; 1959 c. 416.

256.41 History: 1925 c. 141; Stats. 1925 s. 256.41; 1927 c. 439.

256..45 History: 1927 c. 459; Stats. 1927 s. 256.45; 1955 c. 49.

256.46 History: 1913 c. 688; 1913 c. 773 s. 76; Stats. 1913 s. 4078m; 1925 c. 4; Stats. 1925 s. 252.21; 1927 c. 243; 1945 c. 33 s. 53; Stats. 1945 s. 256.46.

256.47 History: 1947 c. 409; Stats. 1947 s. 256.47.

256.48 History: 1953 c. 107; Stats. 1953 s. 324.29 (2m); 1955 c. 165; Stats. 1955 s. 256.48.

256.48 should not be applied so as to burden the successful party with expenses of litigation because the unsuccessful party has no funds with which to pay them. Puhl v. Milwaukee Auto. Ins. Co. 8 W (2d) 343, 99 NW (2d) 163.

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

256.49 History: 1957 c. 118; Stats. 1957 s. 256.49.

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

On calculation of attorney's fees and expenses see Schwartz v. Rock County, 24 W (2d) 172, 128 NW (2d) 450, and State v. DeKeyser, 29 W (2d) 132, 138 NW (2d) 129.

256.49, Stats. 1957, does not affect the fees of the divorce counsel appointed under 247.13. 46 Atty. Gen. 163.

Where a trial court is authorized to order payment of compensation to a court-appointed attorney under 957.26 (1), as amended, the amount is to be determined pursuant to 256.49, Stats. 1961. 50 Atty. Gen. 176.

256.52 History: 1959 c. 131; Stats. 1959 s. 256.52.

256.54 History: 1961 c. 261, 642; Stats. 1961 s. 256.54; 1965 c. 617; 1967 c. 247; 1967 c. 276 s. 39; 1967 c. 282; 1969 c. 87; 1969 c. 158 s. 106.

256.55 History: Sup. Ct. Order, 34 W (2d) v; Stats. 1967 s. 256.55; 1969 c. 255 s. 65.

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

Claim of denial of due process because closing arguments of trial counsel were not recorded verbatim had no merit, there being no request therefor by defendant or his trial counsel under 256.55 (3), Stats. 1965, no objection made to the trial court during or at the close of the state's argument, no motion for a mistrial made, and no assignment of error as to any part of such argument asserted on appeal. Jandrt v. State, 43 W (2d) 497, 168 NW (2d) 602.

256.56 History: Sup. Ct. Order, 34 W (2d) v; Stats. 1967 s. 256.56.

256.57 History: Sup. Ct. Order, 34 W (2d) v; Stats. 1967 s. 256.57.

The trial court and the supreme court have jurisdiction to require a reasonably speedy production of a transcript of the evidence; but ordinarily the application for such hastening

should be made to the trial court first. A reporter is not officially obligated to attend the sittings of a grand jury and such attendance is no excuse for delay in furnishing the desired transcript. In re Snyder, 184 W 10, 198 NW 616.

A court reporter is a public officer and entitled to such compensation as the law provides. The law allows him no extra compensation for making a transcript of evidence in proceeding at the request of the circuit judge. 8 Atty. Gen. 2.

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

256.58 History: 1961 c. 495; Stats. 1961 s. 251.185; 1963 c. 427; 1967 c. 226; Stats. 1967 s. 256.58.

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

256.59 History: 1959 c. 315; Stats. 1959 s. 251.184; 1961 c. 495; 1967 c. 226; Stats. 1967 s. 256.59.

256.65 History: 1963 c. 536; Stats. 1963 s. 957.26 (1m); 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 255 s. 57; Stats. 1969 s. 256.65.

256.66 History: 1965 c. 384; Stats. 1965 s. 957.263; 1969 c. 255 s. 58; 1969 c. 339 s. 27; Stats. 1969 s. 256.66.

256.67 History: 1965 c. 479; Stats. 1965 s. 957.265; 1967 c. 43; 1969 c. 255 s. 59; 1969 c. 276 s. 585 (2); Stats. 1969 s. 256.67.

Appellate counsel for the indigent in Wisconsin. Evans, 41 WBB, No. 5.

CHAPTER 260.

Civil Actions, and Parties Thereto.

260.01 History: R. S. 1878 s. 2593; Stats. 1898 s. 2593; 1925 c. 4; Stats. 1925 s. 260.01; 1935 c. 541 s. 2; Sup. Ct. Order, 245 W vii.

Comment of Advisory Committee: In re Henry S. Cooper, Inc. 240 W 377, the court considered the distinctions between civil actions and special proceedings and stated that there is some confusion in the rules. It was suggested by the chief justice that the advisory committee study the subject and recommend to the court such amendments to the rules as will clarify and harmonize the provisions which relate to special proceedings with those which relate to actions. To that end the advisory committee recommended amendments to sections 260.01, 260.08, 260.10, 260.11 (1) (2d sentence), 260.23 (2), 260.27, 261.08 (1) and (4), 270.08, 270.12 (1), 270.21, 270.26, 270.43 (1st sentence), 270.48 (3) and 270.53. The purpose of those amendments was to clearly indicate that the procedure for actions shall apply to special proceedings unless obviously inapplicable. [Re Order effective July 1, 1945]

260.02 History: 1856 c. 120 s. 1; R. S. 1858 c. 122 s. 1; R. S. 1878 s. 2594; Stats. 1898 s. 2594; 1925 c. 4; Stats. 1925 s. 260.02.

Revisers' Note, 1878: Same as first 4 sections in chapter 122, R. S. 1858. The definitions made are perhaps of little consequence, and have been sharply criticized. But as nobody has suggested any better ones, they may as well be suffered to remain.

260.03 History: 1856 c. 120 s. 2, 3; R. S. 1858 c. 122 s. 2, 3; R. S. 1878 s. 2595, 2596; Stats. 1898 s. 2595, 2596; 1925 c. 4; Stats. 1925 s. 260.03, 260.04; 1935 c. 541 s. 3; Stats. 1935 s. 260.03.

A proceeding to acquire property by eminent domain is a special proceeding. Milwaukee L., H. & T. Co. v. Ela Co. 142 W 424, 125 NW 903; Wisconsin C. R. Co. v. Cornell University, 49 W 162, 5 NW 331.

An application, by one not a party to an action of replevin, to be made a party is a special proceeding. Carney v. Gleissner, 62 W 493, 22 NW 735.

An application to be made a party to partition proceedings is a special proceeding. Morse v. Stockman, 65 W 36, 26 NW 176.

See note to 898.16, citing Hodgeson v. Nickell, 69 W 308, 34 NW 118.

Motions to set aside levies under an execution and apply the proceeds of the sales to the mover's judgment are special proceedings. Auerbach v. Marks, 94 W 668, 69 NW 1001.

A habeas corpus proceeding is to all intents and purposes a civil suit in which the party seeking his liberty is plaintiff within the meaning of sec. 2601, Stats. 1898, and the person charged with the wrong is defendant to all intents and purposes. State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046.

On the distinction between actions and special proceedings see Deuster v. Zilmer, 119 W 402, 97 NW 31.

Mandamus is a civil action. The action is commenced by service of the writ. State ex rel. Risch v. Board of Trustees, 121 W 44, 98 NW 954.

An independent proceeding begun by an original writ, like certiorari or mandamus, is an action. State ex rel. Milwaukee Medical College v. Chittenden, 127 W 468, 107 NW 500.

An order refusing to suppress an examination before trial is a proceeding in the action, not a special proceeding. Mantz v. Schoen & Walter Co. 171 W 7, 176 NW 70.

An order bringing in new parties to an action is not a special proceeding. Bell L. Co. v. Northern Nat. Bank, 171 W 374, 177 NW 616.

The procedure under the corrupt practices act is that appropriate to an "action." State ex rel. Connors v. Zimmerman, 202 W 69, 231 NW 590.

Whether the remedy pursued is an "action" or a "special proceeding" may depend on whether the question affects substantive rights of parties or only matters of procedure. State ex rel. Ashley v. Circuit Court, 219 W 38, 261 NW 737.

See note to 887.29, citing Sora v. Ries, 226 W 53, 276 NW 111.

A juvenile delinquency proceeding under ch. 48 is a special proceeding. Lueptow v. Schraeder, 226 W 437, 277 NW 124.

A proceeding for the vacation of a plat un-