

CHAPTER 252.

CIRCUIT COURTS.

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**252.01 Term of office.** The term of office of every circuit judge, when elected for a full term, is the period of six years, and until his successor is elected and qualified, which commences with the first Monday of January next succeeding his election. Full terms shall hereafter commence in the respective circuits with the first Monday of January in the following years and every sixth year thereafter, namely:

First Circuit . . . . . A. D. 1914	Eighth Circuit . . . . . A. D. 1915
Second Circuit—	Ninth Circuit—
First branch . . . . . A. D. 1918	First branch . . . . . A. D. 1927
Second branch . . . . . A. D. 1918	Second branch . . . . . A. D. 1932
Third branch . . . . . A. D. 1916	Tenth Circuit . . . . . A. D. 1916
Fourth branch . . . . . A. D. 1918	Eleventh Circuit . . . . . A. D. 1913
Fifth branch . . . . . A. D. 1915	Twelfth Circuit . . . . . A. D. 1913
Sixth branch . . . . . A. D. 1917	Thirteenth Circuit . . . . . A. D. 1918
Seventh branch . . . . . A. D. 1926	Fourteenth Circuit . . . . . A. D. 1914
Eighth branch . . . . . A. D. 1926	Fifteenth Circuit . . . . . A. D. 1918
Ninth branch . . . . . A. D. 1934	Sixteenth Circuit . . . . . A. D. 1916
Third Circuit . . . . . A. D. 1915	Seventeenth Circuit . . . . . A. D. 1916
Fourth Circuit . . . . . A. D. 1917	Eighteenth Circuit . . . . . A. D. 1918
Fifth Circuit . . . . . A. D. 1913	Nineteenth Circuit . . . . . A. D. 1916
Sixth Circuit . . . . . A. D. 1913	Twentieth Circuit . . . . . A. D. 1918
Seventh Circuit . . . . . A. D. 1915	

[1935 c. 213]

**252.03 Jurisdiction of circuit courts.** The circuit courts have the general jurisdiction prescribed for them by the constitution and have power to issue all writs, process and commissions provided therein or by the statutes, or which may be necessary to the due execution of the powers vested in them. They have power to hear and determine, within their respective circuits, all civil actions and proceedings and all cases of crimes and misdemeanors of every kind not exclusively cognizable by a justice of the peace or some other inferior court; and they have all the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carry into effect their judgments, orders and other determinations, subject to re-examination by the supreme court as provided by law. Said courts and the judges thereof have power to award all such writs, process and commissions, throughout the state, returnable in the proper county.

**Note:** The circuit court should not have assumed jurisdiction of an action for the probate of a lost codicil after the will had been admitted to probate in the county court. On affirmance of an order sustaining demurrers to the complaint for want of jurisdiction of such an action, the circuit court will be directed to certify the record to the county court pursuant to 269.52 (1). Will of Jones, 207 W 354, 241 NW 387.

The courts are always open to a discharged employe under civil service to inquire whether just cause in fact existed for his discharge, but the courts do not sit to control the judgment and discretion of executive and administrative officials, and the sole function of the courts is to determine whether such officials keep within their jurisdiction and act in accordance with established principles of law, and not to inquire into their secret motives. State ex rel. Nelson v. Henry, 221 W 127, 266 NW 227.

An order or judgment which is void may be expunged by a court at any time, and such right to expunge a void order or judgment is not limited by statutory requirements for reopening, appealing from, or modifying orders or judgments. State ex rel. Wall v. Sovinski, 234 W 336, 291 NW 344.

**252.031 Circuit judge acting as county judge.** The judges of the circuit courts shall have power to perform all duties of county judge in any county, including the duties of judge of the juvenile court, whenever requested to act as such county judge by the county judge of any county who is unable to act on account of illness, accident or other disability, and whenever requested to act as such county judge by the chairman of the board of circuit judges in case of the total disability or death of any county judge.

**252.04 Writs, how issued; certiorari.** All writs issued from the circuit court shall be in the name of the state of Wisconsin, shall bear date the day they are issued, be attested in the name of the judge of the circuit in which issued, and if there be no such judge then in the name of the chief justice of the supreme court, be returnable on the first day of the term next succeeding the date of their issue, unless otherwise directed by law, by the judge or by rule of court, be signed by the clerk, sealed with the seal of the court and directed to some officer or person authorized to serve or execute the same. All writs of certiorari; issued to review any action taken by any county board, town board, common council of any city or board of trustees of any village, or any record lawfully in the custody of any county clerk, town clerk, city or village clerk may be addressed to and served upon the proper county clerk, town clerk, city clerk or village clerk, respectively, who shall make return thereto.

**Note:** Certiorari will not lie to review the decision of a city manager that he has jurisdiction under an ordinance and 62.13, to hear charges against police officers, until such proceedings have culminated in a trial and final determination. State ex rel. Meissner v. O'Brien, 208 W 502, 243 NW 314.

Motion to supersede writ of certiorari is demurrer in effect, and order disposing thereof subject to same right of appeal as decision on demurrer. State ex rel. Geneva School Dist. v. Mitchell, 210 W 381, 245 NW 640.

See note to 100.20, citing State ex rel. Waldorf v. Hill, 217 W 59, 258 NW 361.

Certiorari reaches only jurisdictional questions. State v. Mensing, 228 W 34, 279 NW 659.

The county court, in a proceeding by the holders of defaulted construction bonds of a farm drainage to compel additional assessments against lands to pay the principal and interest on the bonds, acted in a purely judicial capacity in determining the amount due on the bonds. So, landowners contending that the determination made was improper in that recovery on the bonds was barred by the statute of limitations, and in that the bonds did not bear interest after their due date, could not raise such question by certiorari, the error, if any, of the county court not being a jurisdictional error but merely an error of law, and the remedy of the landowners being by appeal from the order confirming the assessments, which was a "final order". In re Farm Drainage Dist. No. 1, Waupaca County, 232 W 455, 287 NW 806.

When certiorari is invoked to review the action of an administrative board, the findings of the board on the facts before it are conclusive if in any reasonable view the evidence sustains them. State ex rel. Morehouse v. Hunt, 235 W 358, 291 NW 745.

A motion to supersede a writ of certiorari is a demurrer to the petition. State ex rel. Bollenbeck v. Shorewood Hills, 237 W 501, 297 NW 568.

In the absence of a governing statutory provision, in cases involving municipal boards established pursuant to statute, which are of a permanent nature, as distinguished from boards of review which complete a particular assignment of work and then adjourn sine die, a writ of certiorari to review their

action may run to either the board or its members. State ex rel. Robst v. Board of Appeals, 241 W 188, 5 NW (2d) 783.

In certiorari to review administrative proceedings, there is neither a trial de novo nor a weighing of the evidence, and the findings under review are conclusive if the record discloses evidence to sustain them. Kushnel v. Registration Board of Architects, 243 W 188, 9 NW (2d) 630.

The question of jurisdiction of an administrative board is always open to the courts for review, since such a board cannot itself conclusively settle that question and thus endow itself with power; and if no appeal from its conclusions is provided, the question whether it has acted within or exceeded its jurisdiction is always open to the examination and decision of the proper court by writ of certiorari. Petition of Heffernan, 244 W 104, 11 NW (2d) 680.

The findings of an administrative board on the facts before it are conclusive on review by certiorari if in any reasonable view the evidence sustains them. State ex rel. Robst v. Board of Appeals, 244 W 566, 13 NW (2d) 64.

On review of proceedings by certiorari, where the several parts of the proceedings are connected and dependent on each other, the whole must be quashed, or affirmed; but proceedings which are independent and disconnected may be quashed in part by deleting that which is erroneous and without jurisdiction, and be affirmed as to the remainder. State ex rel. Heffernan v. Board, 247 W 77, 13 NW (2d) 461.

Action taken by an administrative board will be reviewed by certiorari only after a final determination has been made by the board in the proceeding before it. State ex rel. St. Mary's Hospital v. Industrial Comm. 250 W 516, 27 NW (2d) 478.

An order of the industrial commission, refusing to quash the duces tecum provisions of its subpoena requiring that certain hospital records be produced in a workmen's compensation proceeding, is not subject to review by certiorari on the theory that a witness, before he is required to produce books and papers, is entitled to have the determination of a court as to their relevancy and materiality. The witness must either produce or be subject to the procedure imposed by 192.17 (3) and 325.12. State ex rel. St. Mary's Hospital v. Industrial Comm. 250 W 516, 27 NW (2d) 478.

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

**252.06 Judicial circuits.** The state is divided into twenty judicial circuits, numbered and comprising the county or counties, respectively, as specified in the subsequent

paragraphs of this section. The terms of the circuit courts for the several circuits begin, unless the judge, by order, designates some other hour, at ten o'clock in the forenoon, or as soon thereafter as the judge arrives, of the days in each year specified as follows:

**First Circuit.** In the county of Walworth on the second Monday in February and the third Monday in September; in the county of Racine on the second Monday in April and the third Monday in November; in the county of Kenosha on the second Monday in March and the second Monday in October.

**Second Circuit.** In the county of Milwaukee on the first Monday in January, April, July and October.

**Third Circuit.** In the county of Calumet on the third Monday in March and the third Monday in October; in the county of Winnebago on the second Monday of January, the second Monday of April and the second Monday of September.

**Fourth Circuit.** In the county of Sheboygan on the second Monday in April and the third Monday in September; in the county of Manitowoc on the first Tuesday after the second Monday in January and the first Tuesday after the first Monday in June.

**Fifth Circuit.** In the county of Grant on the fourth Monday in April and the second Monday in October; in the county of Iowa on the fourth Monday in March and the fourth Monday in September; in the county of La Fayette on the first Monday in June and the first Monday in December; in the county of Richland on the second Monday in April and the second Monday in September; in the county of Crawford on the third Monday in May and the third Monday in November.

**Sixth Circuit.** In the county of La Crosse on the first Monday in May and the fourth Monday in October; in the county of Monroe on the third Monday in March and the second Monday in September; in the county of Trempealeau on the first Tuesday in April and the fourth Monday in September; in the county of Vernon on the third Monday in April and the second Monday in October.

**Seventh Circuit.** In the county of Portage on the third Monday in May and the first Monday in December; in the county of Waupaca on the third Monday in April and the first Monday in November; in the county of Waushara on the first Monday in April and the third Monday in September; in the county of Wood on the second Monday in March and the first Monday in October.

**Eighth Circuit.** In the county of Dunn on the second Monday in March and the second Monday in September; in the county of St. Croix on the fourth Monday in March and the fourth Monday in September; in the county of Buffalo on the fourth Monday in April and the second Monday in October; in the county of Pierce on the second Monday of May and the fourth Monday in October; in the county of Pepin on the fourth Monday in May and the third Monday in October.

**Ninth Circuit.** In the county of Dane on the second Monday in January, the second Monday in March and the second Monday in September; in the county of Sauk on the first Monday in March, and the second Monday in September.

**Tenth Circuit.** In the county of Langlade on the second Monday in April and the first Monday in October; in the county of Outagamie on the first Monday in March and the third Monday in September; in the county of Shawano on the second Monday in May and the first Monday in December.

**Eleventh Circuit.** In the county of Burnett on the third Monday of March and the first Monday of November; in the county of Polk on the third Monday of April and the first Monday of October; in the county of Barron on the first Monday of May and the third Monday of November; in the county of Washburn on the first Wednesday after the first Tuesday of April and the third Monday of October; in the county of Douglas on the first Monday of February and the fourth Monday of August.

**Twelfth Circuit.** In the county of Jefferson on the first Monday of February and the third Monday of September; in the county of Green on the fourth Monday of February and the fourth Monday of October; and in the county of Rock on the third Monday of March and the third Monday of November.

**Thirteenth Circuit.** In the county of Washington on the first Monday of February and September; in the county of Ozaukee on the first Monday of March and October; in the county of Dodge on the first Monday of April and November; and in the county of Waukesha on the first Monday of May and December.

**Fourteenth Circuit.** In the county of Door on the first Tuesday in September and the second Tuesday in March; in the county of Brown on the second Monday in January, the second Monday in April and the fourth Monday in September; and in the county of Kewaunee on the third Monday in May and the first Wednesday in November.

**Fifteenth Circuit.** In the county of Ashland on the third Monday in January and on the Friday preceding the first Monday in September; in the county of Taylor on the second Monday in February and in the odd-numbered years on the third Monday in September and the even-numbered years on the Wednesday next after the third Tuesday in September; in the county of Price on the second Monday in April and the first Monday in October; in the county of Bayfield on the first Monday in May and the third Monday in October; in the county of Iron on the third Monday in May and the first Monday in December.

**Sixteenth Circuit.** In the county of Marathon on the second Monday in May and the third Monday in November; in the county of Lincoln on the fourth Monday in March and the fourth Monday in October; in the county of Oneida on the first Monday in March and the third Monday in September; in the county of Vilas on the second Monday in October and the fourth Monday in April.

**Seventeenth Circuit.** In the county of Jackson on the first Monday in May and on the first Monday in November; in the county of Clark on the first Monday in April and on the first Monday in October; in the county of Juneau on the third Monday in April and on the third Monday in October.

**Eighteenth Circuit.** In the county of Fond du Lac on the first Monday in May and the first Monday in November; in Green Lake county on the third Monday in January and the first Monday in June; in the county of Marquette on the second Tuesday in March and the first Tuesday in October; in the county of Columbia on the second Monday in April and the first Monday in December; in the county of Adams on the third Monday in September and the fourth Monday in March.

**Nineteenth Circuit.** In the county of Rusk on the second Monday in May and the first Monday in November; in the county of Sawyer on the first Monday in June and the second Monday in December; in the county of Chippewa on the third Monday in April and the third Monday in October; in the county of Eau Claire on the third Monday in March and the third Monday in September.

**Twentieth Circuit.** In the county of Marinette on the first Monday in October, the first Monday after the first Tuesday in April, and the second Monday in January; in the county of Oconto on the third Monday in October, the first Monday in May and the first Monday in February, but in the county of Oconto no jury shall be drawn and called at the February term of said court except upon order in writing of the circuit judge filed with the clerk of the circuit court; in the county of Florence on the first Wednesday in September and the first Monday in June; in the county of Forest on the third Tuesday in September and on the third Tuesday of May. [1931 c. 298; 1933 c. 79; 1935 c. 367; 1937 c. 7, 8; 1939 c. 10, 404; 1941 c. 90; 1943 c. 383; 1945 c. 45; 1947 c. 141]

**252.07 Courts of second and ninth circuits; domestic conciliation.** (1) **SECOND CIRCUIT BRANCHES.** (a) The circuit court of the second judicial circuit consists of nine branches, as follows: The branch presided over on January 1, 1933,

By Otto H. Breidenbach, constitutes branch No. 1;

By Daniel W. Sullivan, constitutes branch No. 2;

By John J. Gregory, constitutes branch No. 3;

By Walter Schinz, constitutes branch No. 4;

By Gustave G. Gehrz, constitutes branch No. 5;

By John C. Kleczka, constitutes branch No. 6;

By August E. Braun, constitutes branch No. 7;

By Charles L. Aarons, constitutes branch No. 8;

By Richard J. Hennessey, constitutes branch No. 9.

(b) The election of the additional circuit judge for branch No. 9 of the circuit court of the second judicial circuit is hereby authorized. Said circuit judge for branch No. 9 shall be elected by the qualified electors of Milwaukee county at a judicial election to be held in Milwaukee county on the first Tuesday of April, 1934, according to law for the election of circuit judges, for terms commencing on the first Monday of July, 1934, the first term of whom shall last until January 1, 1940, and thereafter the term for such branch shall be for six years.

(2) **EACH BRANCH IS A CIRCUIT COURT.** Each of said branches constitutes a circuit court with all the powers and jurisdiction possessed by circuit courts in circuits having one judge only, and may be designated in all papers and proceedings either by its respective number or by the name of its presiding judge.

(3) **JUDGES CONFER, MAKE RULES; FAMILY COURT BRANCH.** (a) The circuit judges of any circuit having more than one judge shall meet from time to time and divide the business of the whole circuit, apportioning to each branch its due portion thereof, and to that

end they may make such rules and institute such measures as they shall determine will promote justice and expedite business.

(b) The said judges shall at intervals of not less than once in two years designate one of their number who shall devote his time primarily to the work of the juvenile court and they shall at the same time further designate one of their number who shall devote his time primarily to divorce litigation and to such other work as is incidental thereto and which is generally described as the work of a family or domestic relations court; and the two branches presided over by the judges so designated shall be known as the "Family Court Branches." The judges of these two branches shall meet from time to time and divide the work of said branches, apportioning to each branch its due portion thereof. In the case of the absence, sickness or other disability of either one of such judges of such family court branches, such judge shall designate the other judge of such family court branches if available, or otherwise one of the other judges of said circuit, whose duty it shall be to act temporarily in his place.

(c) All suits, actions, and proceedings in said circuit court arising as follows:

1. Under chapter 245 relating to marriage;
  2. Under chapter 247 relating to divorce;
  3. Pertaining to the determination of the custody of children under eighteen years of age upon writs of habeas corpus;
  4. Pertaining to all family and parental affairs not specifically vested exclusively in some other court or branch thereof in the county;
- shall be first assigned to one of the two family court branches, as may be determined by rules of court.

(d) Either of said judges of said family court branches shall have the power and authority in his discretion to refer for disposition any matter before said branch for which there has been a warrant issued to any court otherwise having jurisdiction over such matters.

(4) COURT ROOMS AND OFFICES. In every county having a population of three hundred thousand or more and containing an entire judicial circuit for which more than one judge is provided by law, the county board shall provide suitable court rooms and offices, the sheriff shall provide the necessary deputy sheriffs as attending officers and the clerk of the circuit court shall provide a sufficient number of deputy clerks for all the judges and branches of said court; and the county shall pay to each such judge a salary of one thousand dollars per annum, payable monthly out of the treasury of said county, in addition to the salary paid him out of the state treasury.

(5) SALARY FROM COUNTY. In every county having a population of five hundred thousand or more, and containing an entire judicial circuit, for which more than one judge is provided by law, the county may pay to each such judge, during terms of office commencing after the first day of January, 1924, a sum of one thousand dollars per annum, payable monthly, out of the treasury of said county, as compensation in addition to the salary paid to such judges out of the state treasury and the salary paid to them out of the treasury of said county, pursuant to subsection (4) of section 252.07.

(6) NINTH CIRCUIT; ADDITIONAL JUDGE. The election of an additional circuit judge in and for the ninth judicial circuit is hereby authorized, such judge to be elected by the electors of said circuit on the first Tuesday of April, 1925, according to law for the election of circuit judge.

(7) TERM, ELECTIONS. Such judge, when elected, shall enter upon the discharge of his duties as such, and hold his office for a term commencing on the first day of May, 1925, and ending on the day preceding the first Monday in January, 1932, and his successor shall be elected at a judicial election, to be held on the first Tuesday of April, 1931, and every six years thereafter and shall hold office for the term of six years, such term to commence on the first Monday in January succeeding such election.

(8) TWO BRANCHES. The circuit court of the ninth judicial circuit shall consist of two branches; the branch presided over on January 1, 1925, by E. Ray Stevens constitutes branch No. 1; and the branch to be presided over by the second judge of said circuit shall be branch No. 2.

(9) DEPARTMENT OF DOMESTIC CONCILIATION. (a) In every county having a population of five hundred thousand or more and containing an entire judicial circuit for which more than one judge is provided by law, there is created a department of domestic conciliation. Said department shall be under the direction and supervision of a director of domestic conciliation. Said director of domestic conciliation, through his respective assistants shall:

1. Receive all domestic complaints and make a proper disposition thereof;
2. Make investigations of the facts upon which to base warrants in the cases hereinbefore specified and in all other matters duly referred to said department;

3. Exercise such supervision in connection with the exercise by said court of its jurisdiction as the judges thereof may duly order.

(b) All persons in this department shall keep such records as may be provided by the rules of the judges of the family court branches of said court. Whenever the judges of said family court branches deem publication of matters before them contrary to public policy they may by order close the files thereof and make such other orders in their discretion as may be in the interest of children in such matters and the public morals.

(c) Said department of domestic conciliation shall have such men and women investigators as may from time to time be provided by the county board of supervisors of such county. Said investigators shall be appointed as provided by the board of supervisors of such county under the laws governing civil service in such county.

(d) The officers to assist the director of the department of domestic conciliation in carrying out the supervision and control imposed on him by this section shall be the probation officers of the juvenile court. The county board of supervisors of such county shall provide for such additional probation officers of the juvenile court as shall be necessary to carry out the intent of this act. Such additional probation officers shall be appointed jointly by the judges of the family court branches of the circuit court, under the laws governing civil service in such county.

(e) The county board of supervisors of such county shall provide for such assistance, stenographical and otherwise, as shall be necessary to assist the director of domestic conciliation in carrying out the purposes of this act particularly in regard to the proper disposal of domestic complaints. Such director and all other persons in said department shall be appointed by the judges of the family court branches of the circuit court, except in cases otherwise expressly provided for, under the laws governing civil service in such county.

(f) All public officers in said county shall refer all domestic complaints made to them to said director of the department of domestic conciliation who shall dispose of all matters before it in proper manner.

(10) **SECOND CIRCUIT EQUIPMENT.** The board of supervisors of said county shall furnish said courts and said department of domestic conciliation, the judges, officers and employes thereof with suitable accommodations, adequately centralized and consolidated, and with the necessary furniture and supplies and make provision for its necessary expenses and operation.

(11) **CIVIL SERVICE.** The board of supervisors and county civil service commission shall make suitable reclassifications in positions in said county to accomplish the purposes of this act. [1933 c. 428; 1933 c. 432 s. 2, 3; Spl. S. 1933 c. 9; 1935 c. 213]

**Note:** The county board having elected not rescind its action, the statute containing no authorization to rescind. Petition of any prescribed in the option statute, it could Breidenbach, 214 W 54, 252 NW 366.

**252.071 Judge's salary from county.** In every judicial circuit each county of such circuit may pay to each circuit judge of such circuit, a sum which shall not exceed in the aggregate \$2,000 for the entire circuit as annual salary, payable as other salaries in said county, out of the county treasury, in addition to the salary paid him out of the state treasury and that provided for in section 252.07 such sum as the county board of each county shall determine. [1947 c. 507]

**Note:** County board may rescind resolution to pay circuit judge additional salary. 21 Atty. Gen. 483.

**252.08 Board of circuit judges.** (1) The several circuit judges of the state and the judge of any court having unlimited jurisdiction concurrent with the circuit court either in civil or criminal matters shall constitute a board known as the "Board of Circuit Judges." They shall meet at least once in each year at such time and place as they shall determine. They shall make such rules and regulations as they shall deem advisable, not inconsistent with the statutes or the rules of practice adopted by the justices of the supreme court, to promote the due and prompt administration of the judicial business of their respective courts. Said board shall elect a chairman whose duty it shall be to expedite and equalize so far as practicable the work of the said judges. The chairman shall request judges whose calendars are not congested to assist those judges whose calendars are congested. Every circuit judge shall report monthly, and every clerk and reporter of a circuit court shall report when requested, to the chairman such information as the latter shall request respecting the condition of judicial business in the circuit of such circuit judge. The chairman shall perform such other duties as the board shall prescribe. [1933 c. 140 s. 2]

**252.09 Terms; jury; trial; calendar; note of issue.** Every term of the circuit court continues to the commencement of the next term in the same county. A jury shall be drawn and summoned to appear at ten o'clock in forenoon, of the first day of each term, unless the presiding judge directs some other time or directs that no jury be summoned;

which direction he may make for the convenience of business or when satisfied that no jury issues will be for trial. All criminal cases arising after the commencement of a term shall be placed upon the calendar of the current term. In certiorari and appeals the date of filing the return is the date of issue. Every issue of fact or law may be noticed for trial at any time. A note of such issue may thereupon be filed by either party, and at the expiration of ten days after service of such notice the clerk shall place such issue on the calendar of the current term. The note of issue shall contain the title of the action, the names of the attorneys, the time when issue was joined, and state whether the issue be of law or of fact, and if the latter, whether triable by the court or by the jury. If such note of issue be not filed the court may direct the action when noticed for trial to be placed on the calendar. [*Stats. 1931 s. 270.09 part; Supreme Court Order, effective Jan. 1, 1934*]

**252.10 Review of judgments and orders; unfinished business goes to next term; opening court; attendance of officers, pay.** (1) All judgments and court orders may be reviewed by the court at any time within sixty days from service of notice of entry thereof, but not later than sixty days after the end of the term of entry thereof.

(2) All matters pending and undisposed of at the end of a term are continued to the next term and shall be placed upon the calendar of the next term in accordance with their nature and date of issue.

(3) Except when otherwise directed by the presiding judge, no officer, other than the clerk, shall be paid for attending court or the judge when the court is not engaged in the trial of jury cases. Every officer attending court upon the order of the presiding judge shall have the same powers and authority as the sheriff, and shall be paid out of the county treasury upon the certificate of such judge not to exceed four dollars per day.

(4) The court shall be opened on the first day of each term and on each day when a jury is in attendance by proclamation of the sheriff in the following words:

Hear ye! Hear ye! Hear ye! The circuit court for the county of . . . is now open. Silence is commanded. [*Court Rule II; Supreme Court Order, effective Jan. 1, 1934*]

**Note:** In reviewing its order granting judgment on the verdict, the circuit court is without jurisdiction to set aside the verdict and grant a new trial on a motion on the minutes of the judge where more than 60 days have elapsed after the verdict was rendered and no order has been made extending the time for cause. *Volland v. McGee*, 236 W 358, 294 NW 497, 295 NW 635. See note to 252.10, citing *Parish v. Awschu Properties, Inc.*, 243 W 269, 10 NW (2d) 166. Courts of record have no power in municipal ordinance cases to review their judgments and impose other sentences, during term or afterwards, after execution of original sentence has commenced. Subsection (1) is not applicable to such cases. 32 Atty. Gen. 228.

**252.11 Special terms.** Every term in any county is a special term for every other county in the same circuit, unless the presiding judge files with the clerk of the court at least twelve days before the term an order directing otherwise as to any such other county. At any term in any county which is by law a special term for any other county or counties, all business may be done arising in such other county or counties, which might be done at a term in the county where the business arose except the trial of issues of fact by a jury in cases other than those arising in actions of quo warranto and mandamus, and excepting also the trial of issues of fact in actions made local by law and arising in some county other than the one in which such special term is held. All orders, findings and judgments made, and papers filed in connection therewith at any special term, shall be authenticated by the clerk of such court and filed and entered of record in the office of the clerk of the circuit court in the county where the action or proceeding is pending; and no entries need be made in the office of the clerk of the circuit court of any other county. [*Supreme Court Order, effective Sept. 1, 1931*]

**Note:** A notice of hearing of a motion for an extension of time for settling a bill of exceptions in circuit court was fatally defective for not designating the place of hearing where, although the venue of the action was in a certain county, such county was one of several in the circuit. *Morris v. P. & D. General Contractors, Inc.* 236 W 513, 295 NW 720.

**252.12 Transmittal of papers.** For the purpose of the trial or hearing of any action or proceeding at any special term the clerk of the court shall, at the request of either of the parties, transmit all the papers on file in such action or proceeding, under his official certificate, certifying the same to be all the original files and papers therein on file in his office. Such papers, so certified, shall be inclosed by such clerk in an envelope, sealed by him, directed to the clerk of the circuit court of the county where such special term is to be or is being held, and may be transmitted by mail or by the hand of any person selected by such clerk; and after the trial or hearing of such action or proceeding the clerk last above named shall in like manner remit the same to the clerk of the court in which such action or proceeding is pending; but before any clerk shall be obliged to transmit any such papers he shall be paid all necessary postage, and the clerk remitting the same shall also be paid his fees in such action or proceeding.

**252.13 Holding court in other circuits.** (1) Any circuit judge may hold court and perform any judicial act in any judicial circuit of the state other than the one for which he was elected or appointed, upon the request of the judge of such other circuit or of the chairman of the board of circuit judges; and it shall be the duty of any circuit judge to comply with any such request of the chairman unless the chairman shall relieve him from performance after such request is made.

(2) Terms required by law to be held in any circuit at times when there is a vacancy in the office of judge of such circuit and at times when such judge on account of absence, sickness or disability is unable to call in another judge shall be held by a judge or judges designated for that purpose by the chairman of the board of circuit judges.

(3) Whenever any judge, upon such request, attends a term out of his circuit to assist another judge holding court at such term, both he and the other judge may hold court and try cases separately at the same time and exercise all the powers of a presiding judge at such term.

**252.14 Court commissioners.** (1) In each county constituting a part only of a judicial circuit, the circuit judge shall appoint such number of court commissioners, not exceeding six, as the proper transaction of business requires, except in counties having a population exceeding sixty-five thousand, according to the last census, where the number may be increased to ten. In each county constituting an entire judicial circuit with two or more branches each circuit judge shall appoint one, and if the proper conduct of business requires it, two court commissioners. Each court commissioner shall hold office during the term of office of the judge who appointed him, and until his successor is appointed and qualified, and, before entering upon the duties of his office, shall take and subscribe the constitutional oath of office and file the same duly certified, together with his appointment, in the office of the clerk of the circuit court of the county in which he resides.

(2) In counties having a population of 500,000 or more, the divorce counsel and one assistant divorce counsel may be appointed court commissioners, in addition to those appointed under subsection (1). The term of court commissioners appointed under this subsection shall be coextensive with their tenure of office. [1945 c. 408]

**252.145** [Repealed by 1925 c. 224]

**252.15 Commissioners' powers and duties.** (1) Every court commissioner may issue subpoenas for witnesses and attachments and other process to compel their attendance, administer oaths, take depositions and testimony in civil actions when authorized by law or by rule or order of any court having jurisdiction of such actions, and return and report such depositions and testimony; take and certify the acknowledgments of deeds and other instruments in writing, state accounts between parties referred to him by order of court, determine upon the amount and sufficiency of bail, allow writs of habeas corpus, certiorari and ne exeat, alternative writs of mandamus and grant injunctive orders excepting in the class of cases mentioned in section 133.07 (2); may exercise within his county, or at his office located in a city or village within an adjoining county as hereinafter provided, the powers conferred by section 269.29, and perform such other duties as may be required of him by the circuit court, or as are necessary and proper for the full exercise of the powers hereby granted; and shall also have power concurrent with but not exceeding that of a judge of the circuit court at chambers to punish as for contempt for disobedience of any lawful order made by himself in supplementary and other proceedings and matters properly and lawfully instituted or pending before him; subject, however, to review in all cases by the circuit court as provided by law and the rules and practices of the court, except when such powers shall be exercised in an action pending in another court of record of the county for which said court commissioner shall have been appointed and acting and in such case the review shall be by the court in which the action is pending; provided, however, that in any county constituting an entire judicial circuit, whenever any party is charged with contempt for disobedience of any order or direction made by a court commissioner in supplementary proceedings, such court commissioner shall order such party to appear in the court in which the judgment was entered upon which such order or direction was based, and there show cause why such party should not be punished for such alleged contempt; provided, further, that such order citing the party who is charged with contempt, to appear before the court, shall be served by the sheriff. He shall keep a record of all proceedings before him and at the expiration of his term of office shall deposit such record and all papers remaining on file with him in the office of the clerk of the circuit court. Every court commissioner residing in a city or village which is situated partly in one county and partly in an adjoining county, who shall reside in that part of the city or village situated in one of such counties and maintain an office for the transaction of business in that part of the city or village located in such adjoining county, may in actions and proceedings pending in a court in the county



of his residence make orders, administer oaths, take depositions, conduct examination and supplementary proceedings, and exercise all other powers and perform all other duties conferred upon him by law at his office in that part of the city or village located in such county adjoining the county in which he resides, and may issue subpoenas, orders, attachments and other process to compel the attendance of parties and witnesses at his office, and may set any hearing or other proceeding which may properly come before him for hearing either at such residence or such office. Every court commissioner residing in any county in this state in which the county court has civil jurisdiction, shall have the same powers in any civil action in such county court as he would have if such action were pending in the circuit court for such county.

(2) In each county constituting an entire judicial circuit with three or more branches, the circuit judges may designate two or more court commissioners to make findings of fact and conclusions of law in actions brought to foreclose mortgages or mechanics' liens. Said circuit judges may also refer to said court commissioners the following cases:

(a) When the trial of an issue of fact shall require the examination of a long account on either side; in which case the court commissioner may be directed to hear and decide the whole issue or to report upon any specific question of fact involved therein; or

(b) When the taking of an account shall be necessary for the information of the court before judgment or for carrying a judgment or order into effect; or

(c) When a question of fact, other than upon the pleading, shall arise upon motion or otherwise in any stage of the action.

(3) The compensation of the court commissioners for such service shall be fixed by the circuit judges, including fees for reporting services, and such compensation shall be in full for all services performed by such court commissioners. No transcript of testimony taken before said court commissioners shall be reduced to typewriting unless specifically authorized by the circuit judges. [1933 c. 463; 1943 c. 228]

**Note:** A court commissioner may compel examination held before him. McGeoch Bldg. the production of documents and other instruments of evidence for use on an adverse Co. v. Dick & Reuteman Co., 241 W 267, 5 NW (2d) 804.

**252.155 Public hearing before court commissioner.** All proceedings and hearings before a court commissioner shall be public and every citizen may freely attend the same. [1931 c. 231]

**252.16 Commissioners' powers of county judges.** Every county judge shall have and may exercise in his county all the powers and perform all the duties of a court commissioner as defined in section 252.15; and every authority granted to, or limitation of the powers of, a court commissioner by these statutes shall be construed to extend to the county judge, acting in such capacity except when otherwise expressly provided.

**Note:** See note to 361.01, citing 35 Atty. Gen. 289.

**252.17 Fees of court commissioners.** Court commissioners shall be entitled to the following fees:

For taking bail, 38 cents.

Deciding upon an application for a writ of habeas corpus or certiorari, 38 cents, whether such writ be allowed or not.

Every attendance upon the hearing of any motion for an order which such officer is authorized to grant, 50 cents; and the like fee for attendance upon any motion for an official act to be done by such officer, when no fee is specially provided for such act.

Admitting any person to prosecute or defend as guardian of any infant, 25 cents.

Every order for a commission to examine witnesses, 25 cents.

Attending, settling and certifying interrogatories to be annexed to a commission, 50 cents.

Every order for the examination of a witness conditionally or upon any proceedings to perpetuate his testimony, 25 cents.

Every day's attendance upon the taking of testimony or examination of witnesses in any matter or proceeding whatever, whether acting as a referee or otherwise, \$5, and also 20 cents per folio for all testimony so taken.

Every necessary order in progress of a cause, except orders to stay proceedings, 25 cents.

Signing a judgment, 12 cents.

Taking the acknowledgment of satisfaction of a judgment, 25 cents.

Taking a bond, undertaking or recognizance, when the same is required or authorized by law, 25 cents.

For deciding on the sufficiency of sureties and certifying such sufficiency in cases where it shall appear, 25 cents.

For every precept for a jury, subpoena for a witness or attachment for a witness, 25 cents.

Receiving and filing the petition and accompanying papers of an insolvent debtor, 50 cents.

For every order, warrant, certificate or appointment of assignees in such proceeding, 25 cents.

For deciding on the propriety of directing an assignment of the estate of an insolvent debtor, \$1.

Signing the discharge of any insolvent debtor, 75 cents.

For every order, warrant, or attachment made or issued in any special proceeding authorized by law, including proceedings supplementary to execution, except the order requiring the judgment debtor to appear and answer and the warrant for the arrest of the debtor, 25 cents.

For every notice to any party, officer or person, required to be given by any such officer, 25 cents.

For every report and all other papers and proceedings which he may be required by law to prepare, in order to be signed by himself, in cases where no specific allowance shall have been made for such paper or proceeding, for drafting the same, 20 cents for each folio, and for copying, 7½ cents for each folio.

Hearing and deciding on the return of a writ of habeas corpus, \$1.

For administering an oath, in cases where no fee is specifically provided for by law, and certifying the same when required, 12 cents.

For taking and certifying the acknowledgment or proof of any conveyance of real estate or any other instrument which by law may be recorded, 25 cents for each person making such acknowledgment or whose execution of such conveyance or instrument shall be proved.

Taking a surrender of principal in any cause, 25 cents.

For a commitment of such principal, 25 cents.

Allowing a writ of habeas corpus or certiorari, 25 cents.

For marrying and making certificates and return thereof, \$1.50.

For perusing a bill or petition for an injunction or ne exeat and allowing or refusing writ, \$1.

For issuing a warrant required by chapter 273, 50 cents.

For making an order requiring a judgment debtor to appear and answer concerning his property, 50 cents.

For administering an oath to a witness, 10 cents.

For filing every necessary paper, 6 cents. [1947 c. 257]

**Note:** County judge is not entitled to receive fees as court commissioner. 23 Atty. Gen. 111.

**252.18 Court reporter and assistant; oaths of office.** Every circuit judge may, in his discretion, appoint a competent phonographic reporter for the circuit or the branch of a circuit, as the case may be, for which he was elected or appointed; and when he shall deem it necessary he may appoint one or more competent assistant reporters. The appointing judge or his successor may remove any such reporter or assistant reporter at pleasure and appoint a successor. Every person so appointed as reporter or assistant reporter is an officer of the court and shall take and file the official oath. When so qualified every reporter and every assistant reporter shall be authorized to act in any circuit court in the state. Every reporter shall attend upon the terms of court in the circuit or branch for which he is appointed and, when requested by the judge appointing him, upon the sessions of court presided over in other counties by such judge, and shall discharge such other duties as the court or judge thereof requires; and every assistant reporter shall attend upon the court for which he is appointed, whenever requested so to do by the circuit judge.

**Note:** Power and duty of counties to furnish all or part of supplies and equipment of circuit court to require counties to furnish circuit court used by circuit court reporter court with all supplies deemed by said court reasonably necessary for its functioning as can be grounded upon inherent power of court. 31 Atty. Gen. 222.

**252.19 Additional compensation of reporters.** In addition to the compensation payable from the state treasury under section 20.66 (2), each reporter appointed pursuant to section 252.18 in the second circuit shall be further compensated for his services at the rate of \$75 per month, payable out of the treasury of the county comprising such circuit, and in any other circuit divided into 2 or more branches shall be further compensated for his services at the rate of \$50 per month, payable out of the treasury of the county or counties embracing such circuit. If there are 2 or more counties in such circuit, each county shall pay such proportion of said sum as its population at the last census shall bear to the entire population of such circuit according to such census. Such payments shall be made upon affidavit of the reporter and the certificate of the judge with whom the service shall have been performed, showing performance, and filed with the county clerk. The reporter of the circuit in which actions against state officers and state

commissions are required to be tried, who receive the additional compensation provided by section 20.66 (2) of the statutes shall not receive any sum from the counties comprising such circuit. [1947 c. 228]

**252.20 Transcripts.** Every reporter shall, upon the request of a party to any action, transcribe in longhand or typewriting, the evidence or any other proceedings taken by him in such action or any part thereof so requested, and make, when requested, any number from 1 to 4 carbon copies, each duly certified by him to be a correct transcript thereof, for which he shall be entitled to receive from the party requesting the same 15 cents per folio for single transcript and 5 cents per folio for each carbon copy; except that when transcript is requested by the state or any political subdivision thereof, the charge shall be 10 cents per folio for single transcript and 2½ cents per folio for each carbon copy. In the trial of any criminal action or proceeding the court may, in its discretion, and, in case of commitment to any state penal or reformatory institution, or to a house of correction in counties having and maintaining same, shall order such transcript of the evidence and proceedings to be made and certified by the reporter and filed with the clerk of the court, and a certified duplicate of such transcript to be filed with the warden or superintendent of the institution to which the person may be sentenced, and the cost thereof, not exceeding 10 cents per folio for the original transcript and 2½ cents per folio for the duplicate, shall be certified and paid by the county treasurer upon the certificate of the clerk of the court. In case of application for a pardon or commutation of sentence said duplicate transcript shall accompany the application. In all actions in which any circuit court shall order a compulsory reference the court may direct the reporter thereof to attend the trial of such action, take the evidence and proceedings therein and furnish the referee or referees with a transcript thereof in longhand or typewriting, when the court shall so order. Such reporter shall receive the same fees for such transcript of testimony, paid in the same manner as hereinbefore provided. This section does not prohibit an additional charge, made by special arrangement, for transcribing proceedings in longhand or typewriting from day to day during the progress of a trial. The provisions of this section shall govern the charges for transcripts and copies thereof which may be made by reporters of municipal courts having the same criminal jurisdiction, except treason, as circuit courts. [1931 c. 79 s. 25; 1947 c. 463]

**252.21** [Renumbered section 256.46 by 1945 c. 33 s. 53]