

## CHAPTER 302.

## TRIALS AND JUDGMENTS.

302.03	Minutes of evidence; attendance of constable.	302.20	Trial without jury.
302.04	Demand for jury; waiver.	302.21	Rules in courts of record to apply.
302.05	Officer to write names.	302.23	Default judgment.
302.06	Who to write if officer absent.	302.24	Nonsuit.
302.07	Jurors, how chosen.	302.245	Contents of judgments.
302.08	Venire to issue.	302.25	Judgments generally.
302.09	Agreed jury.	302.26	Costs.
302.10	Talesmen.	302.27	Judgment, when rendered.
302.11	Form of venire.	302.29	Release of sum in excess of jurisdiction.
302.12	Jurors, how summoned.	302.31	New trial.
302.13	Failure to appear contempt; penalty; proceedings.	302.32	Application for new trial; procedure.
302.14	Challenges for cause.	302.33	Action on judgment, limitation.
302.15	Oath to jurors.	302.34	Transcript of judgment.
302.16	Jury to hear the parties in public.	302.35	Index to judgments.
302.18	Return of verdict; judgment accordingly.	302.36	Setoff of judgments.
302.19	Jury unable to agree, discharge of jury; new trial.	302.37	When judgments before different justices.
		302.38	Setting off judgments.

[302.01 Stats. 1943 repealed by 1945 c. 441]

[302.02 Stats 1935 repealed by Supreme Court Order, effective Jan. 1, 1937]

**302.03 Minutes of evidence; attendance of constable.** The justice shall take full minutes of all evidence given on the trial and file them in the action, unless the taking of such minutes is waived by the parties. He may command any constable to attend the trial and shall make an entry thereof in his docket.

**302.04 Demand for jury; waiver.** After issue joined and before the commencement of the trial, either party, on paying to the justice the amount for jurors' fees for one day to apply on jury fees may demand a jury trial; and a neglect to make such demand is a waiver of the right to trial by jury. The money so advanced shall be paid to the jurors after they have rendered their verdict.

**Cross Reference:** For fees of jurors see 307.02.

**302.05 Officer to write names.** Upon demand for a jury the justice shall direct the sheriff or any constable of the county present to write the names of 18 persons of the county, eligible as jurors in courts of record and not of kin to any party or interested in the action.

**302.06 Who to write if officer absent.** If no officer be present the justice may appoint a suitable person to write down the names of such persons, to whom he shall administer an oath or affirmation, which shall be as follows:

You do solemnly swear (or affirm) that you will perform the duties required of you according to the best of your abilities, without partiality to either party.

**302.07 Jurors, how chosen.** From the names listed each party, commencing with the party demanding a jury, may strike alternately 6 names; and in case of the failure of either party to strike, the justice shall strike out 6 names.

**302.08 Venire to issue.** The justice shall issue a venire requiring the officer to summon the 6 persons whose names remain upon the list to appear at a time and place mentioned therein to make a jury for the trial of the action.

**302.09 Agreed jury.** The parties may agree upon 6 or any less number of jurors to try the action, and in such case the justice shall direct, in the venire, the summoning of the persons agreed upon, who shall compose the jury.

**302.10 Talesmen.** If any juror fails to attend at the time he is summoned to appear or if legal objections are raised to any who appear the justice shall order the officer to summon talesmen to supply the deficiency.

**302.11 Form of venire.** Substantially the following form of a venire may be used:

State of Wisconsin, } In Justice Court  
 .... County. } Before ...., Justice of the Peace

The State of Wisconsin, to the sheriff or any constable of said county:

You are hereby commanded to summon .... [here insert names of jurors] to appear before the undersigned, justice of the peace, on the .... day of ....., at .....

o'clock in the .... noon, at my office at ....., to make a jury for the trial of an action between .... ., plaintiff, and .... ., defendant.

Dated ....., 19...

....., Justice of the Peace.

**302.12 Jurors, how summoned.** The officer shall summon the jurors personally by reading the venire to them and shall certify and return his doings thereon to the justice.

**302.13 Failure to appear contempt; penalty; proceedings.** Every person duly summoned as a juror who fails to appear or who refuses to serve is guilty of contempt; and the justice shall fine him not less than \$5 nor more than \$10 and commit him to the county jail until the fine is paid; and if any person so duly summoned refuses to appear, the justice shall issue an attachment, directed to the sheriff or any constable of his county, requiring the officer to arrest the person so summoned and to bring him before the justice to serve as a juror. The fees for issuing and executing the attachment shall be the same as for a civil warrant and they shall be paid by the person attached. If any person summoned as a juror appears and shows good cause therefor the justice may excuse him from serving.

**302.14 Challenges for cause.** Either party may challenge any juror for cause and may have him sworn to answer concerning the challenge and may prove the cause by other evidence. The justice shall decide the challenge.

**302.15 Oath to jurors.** The jurors selected shall be sworn by the justice as provided in section 331.39.

**302.16 Jury to hear the parties in public.** The jurors shall sit together and hear the proofs and allegations of the parties. The trial shall be public.

[302.17 Stats. 1935 repealed by Supreme Court Order, effective Jan. 1, 1937]

**302.18 Return of verdict; judgment accordingly.** When the jurors have agreed upon their verdict they shall deliver it to the justice publicly and he shall enter it in his docket and enter judgment according to the verdict. A verdict is valid if agreed to by 5 jurors.

**302.19 Jury unable to agree, discharge of jury; new trial.** When a justice is satisfied that a jury, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice render judgment on the evidence before him or that a new trial be had before him.

**302.20 Trial without jury.** When an action has been submitted to a justice for his decision he shall not receive or consider further evidence or any communication about it, except on due notice to the parties, until he has rendered judgment.

**302.21 Rules in courts of record to apply.** The rules of evidence shall be the same in actions before justices as in courts of record.

[302.22 Stats. 1943 repealed by 1945 c. 441]

**302.23 Default judgment.** If the defendant fails to appear at the time specified for the return of process duly served or at the hour of adjournment the justice shall proceed to hear the proofs of the plaintiff and render judgment thereon.

**302.24 Nonsuit.** (1) Judgment of nonsuit shall be rendered against the plaintiff if he discontinues his action before the argument to the jury has been concluded or waived; or if he fails to appear at the return hour; or at the hour of adjournment.

(2) A compulsory nonsuit shall not be ordered after evidence has been submitted to the jury.

**302.245 Contents of judgments.** Each judgment for money damages shall specify clearly the relief granted and the place of abode, and occupation, trade or profession of each party as accurately as can be ascertained.

**302.25 Judgments generally.** (1) Judgment shall be for the plaintiff for the amount of damages found by the jury or the justice, less any offset established by the defendant.

(2) Judgment shall be for the defendant if the justice or jury finds that the plaintiff has no cause of action or that the defendant's counterclaim exceeds the plaintiff's damages.

**302.26 Costs.** Unless herein otherwise provided, judgment shall be with costs of the action.

**302.27 Judgment, when rendered.** If the plaintiff is nonsuited or a verdict is rendered or the defendant is in custody, the justice shall forthwith render judgment; otherwise he may adjourn the action not more than 72 hours and at the adjourned hour shall enter judgment.

[302.28 Stats. 1943 repealed by 1945 c. 441]

**302.29 Release of sum in excess of jurisdiction.** If any sum found in favor of a party exceeds the sum for which a justice is authorized to give judgment such party may remit or release the excess and take judgment for the residue.

[302.30 Stats. 1943 repealed by 1945 c. 441]

**302.31 New trial.** A new trial may be granted a defendant at any time within one year from the rendition of judgment upon a publication of notice where no service has been had and the defendant did not appear. But if notice of entry of judgment is personally served on such defendant his time to move for a new trial is limited to 20 days.

**302.32 Application for new trial; procedure.** Such new trial shall be granted upon a petition, subscribed and sworn to by the defendant or his attorney, addressed to the justice who rendered the judgment, or the justice to whom or the court into which the action has been removed, and setting forth a valid defense, in whole or in part, to the complaint; and if the court is satisfied that the petition sets forth a valid defense, in whole or in part, it shall make an order setting the time and place and the court before which a new trial will take place. A copy of the petition and order shall be served on the plaintiff at least 10 days previous to the time fixed for the new trial. The petition shall stand as the answer to the complaint; and thereafter the same proceedings shall be had as in other trials.

**302.33 Action on judgment, limitation.** No action on a judgment rendered by a justice shall be brought in the same county within 5 years after its rendition, except in case of his incapacity to act, or in case the process was not personally served on some defendant, or in case of the death of some party, or in case the docket or record of such judgment has been lost or destroyed.

**302.34 Transcript of judgment.** (1) Every justice, on demand of any person in whose favor a judgment has been rendered, either by him or his predecessor in office whose dockets are in his custody, shall give to such person a certified transcript of the judgment. The transcript may be in substantially the following form:

A. B. )	In Justice Court
v. )	Before . . . . ., Justice of the Peace
C. D. )	

. . . . County.  
 Date of judgment . . . . , 19...  
 Judgment for the plaintiff for the sum of \$. . . . , damages.  
 Costs \$. . . . Total \$. . . .  
 Costs of copy 25 cents.  
 Name of attorney for judgment creditor, if any . . . . .  
 Name, abode and vocation of judgment debtor . . . . .  
 I certify the above to be a true copy of a judgment rendered before me (or before . . . . ., justice of the peace), in the above entitled action, as appears from my (or his) docket now in my custody.  
 Dated . . . . , 19...  
 . . . . ., Justice of the Peace.

(2) When the execution upon any judgment has been stayed the justice shall state in the transcript that execution was stayed and give the name of the person who entered into the undertaking for that purpose.

**302.35 Index to judgments.** Every justice shall keep an alphabetical index under the names of the judgment debtors of all judgments entered in his docket by him. The index shall give the names of the parties and the page of his docket where each judgment is entered.

**302.36 Setoff of judgments.** If there be mutual justice's judgments equitably belonging to the same parties, upon which the time of appealing has elapsed on which there is no existing execution, one judgment, on the application of either party and reasonable notice given to the adverse party, may be set off against the other by the justice before whom the judgment against which the setoff is proposed may be.

**302.37 When judgments before different justices.** If the judgment proposed as a setoff was rendered before another justice the party proposing such setoff must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment that it is unsatisfied in whole or in part and that there is no appeal or existing execution thereon, and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a setoff. The jus-

tice granting such transcript shall make an entry thereof in his docket and all further proceedings on such judgment shall be stayed unless such transcript shall be returned with the proper justice's certificate that it has not been allowed in setoff.

**302.38 Setting off judgments.** In setting off judgments the justice shall make an entry thereof in his docket. If a justice allows a judgment rendered by another justice to be set off he shall file the transcript among the papers relating to the judgment in which it is allowed in set off. If he refuses the setoff he shall so certify on the transcript and return it to the party who offered it.