CHAPTER 251.

SUPREME COURT.

251.01 Terms of justices. The term of office of each of the elected justices of the supreme court shall commence on the first Monday of January next succeeding their election.

History: 1953 c. 606.

251.02 Clerk of supreme court. The said justices shall appoint a clerk of the supreme court who shall hold his office at their pleasure. Such clerk, before entering upon the discharge of his duties, shall take and subscribe the constitutional oath of office, and file the same, duly certified, in the office of the secretary of state.

251.03 Deputy clerk. The clerk of the supreme court may appoint a deputy clerk to aid him in the performance of his duties, who shall perform the duties of said clerk in case of his absence or inability to act.

History: 1955 c. 204.

251.04 Employes. (1) Each justice of the supreme court may appoint a secretary to render such assistance in the performance of his duty as may be required, and may remove the person so appointed at pleasure and appoint another in the place of the one so removed.

(2) Each justice shall certify such appointment to the director of budget and accounts, with the date of the commencement of such service, and shall also notify him of the termination of the service.

(3) Such justices may appoint a messenger for said court.

(4) The chief justice or one of said justices shall certify the appointment of such messenger to the director of budget and accounts, with the date of the commencement of such service, and shall also notify him of the termination of such service.

(5) The compensation of such secretaries and messengers shall be paid on warrants drawn by the director of budget and accounts. The trustees of the state library may appoint one or more janitors for service in and about the library and rooms of the justices of the supreme court. Such appointments and the compensation fixed shall be certified to the director of budget and accounts by the chief justice and paid as aforesaid.

(6) The justices may employ not to exceed 2 attorneys at law to assist them as law examiners and to perform such other duties as they may require. Each such attorney shall be admitted to practice as an attorney in all courts of this state and shall have at least 5 years' experience in the practice of law in the state of Wisconsin. The salary of each such attorney shall not exceed $5,000 per annum.

251.05 Crier; marshal. Such justices may also appoint a crier for said court, who shall attend the terms thereof and perform all the duties required of him by law or by said court, or by the justices thereof. The compensation of the crier shall be audited upon the written allowance of the chief justice or, in case of his absence or sickness, of one of the justices, and paid out of the state treasury. And such justices may further appoint a marshal and assign to him such duties in and about the judicial rooms as they may see fit, including the duties of crier when there is no person holding such position who is competent to act.

251.055 Pay of employes. Compensation paid to employes and assistants of the court shall be consistent with that paid to state employes in the competitive division of the

classified service for services involving similar work and responsibility where comparisons are possible.

History: 1951 c. 319 s. 220.

251.06 Terms of court. There shall be held in the supreme court room at Madison one session of the supreme court in each year, to be called the August term, which shall commence on the second Tuesday in August.

251.07 Adjournments; no quorum. The justice or justices present, less than a quorum, in the absence of the other justices, may adjourn the court to a day in the same term; and in the absence of all the justices such adjournment may be made to a day appointed in an order signed by three or more of the justices and filed with the clerk; and in case of the absence of all the justices and their failure to make such an order the clerk may adjourn the court from day to day for six days; and if the court shall not be opened for six days and all matters pending therein shall stand continued until the next term and no action or matter shall abate or be discontinued.

251.08 Appellate jurisdiction. The supreme court shall have and exercise an appellate jurisdiction only, except when otherwise specially provided by law or the constitution, which shall extend to all matters of appeal, error or complaint from the decisions or judgments of any of the circuit courts, county courts or other courts of record and shall extend to all questions of law which may arise in said courts upon a motion for a new trial, in arrest of judgment, or in cases reserved by said courts.

251.09 Discretionary reversal. In any action or proceeding brought to the supreme court by appeal or writ of error, if it shall appear to that court from the record, that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the supreme court may in its discretion reverse the judgment or order appealed from, regardless of the question whether proper motions, objections, or exceptions appear in the record or not, and may also, in case of reversal, direct the entry of the proper judgment or remit the case to the trial court for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with the statutes governing legal procedure, as shall be deemed necessary to accomplish the ends of justice.

Cross Reference: For reversible error, see 274.37.

In actions for personal injuries, partisan conduct of the trial judge in taking over the examination of the plaintiffs' witnesses, commenting on and interpreting their testimony, and assisting continuously in developing the plaintiffs' case requires in the interest of justice that judgments against the defendant be reversed and the causes remanded for a new trial. Reuling v. Chicago, St. P. M. & O. R. Co. 257 W 485, 44 NW (2d) 253.

Where, through no fault of counsel, the trial court failed to decide the plaintiff's motion for changes in some of the jury's answers or for a new trial within the 60-day period prescribed by 270.49 (1), and the court consequently entered judgment on the special verdict as rendered, and there were inconsistencies and conflicts in the jury's answers, calling for due consideration and an appropriate and timely judicial determination of the issues raised by the motion, the supreme court, acting under its discretionary power may reverse the judgment and remand the cause for a new trial. Brown and Erb, 258 W 444, 46 NW (2d) 329.

Where a different special verdict and instructions might have presented the real issue in this case better than the special verdict submitted and the instructions given, but the plaintiff's uncorroborated testimony was so thoroughly impeached in material matters that no conscientious jury could decide the issue in his favor, the supreme court will not exercise its discretionary power to reverse the judgment and order a new trial. Ernst v. Ernst, 259 W 495, 49 NW (2d) 427.

Although, generally, the supreme court will not consider an assignment of error which is presented therein for the first time, the court has the unquestioned power to consider the entire record and to dispose of questions of law clearly presented therein, and will exercise it here. Estate of Zeimet, 259 W 619, 49 NW (2d) 824.

In an action by the seller to recover on a note for the balance of the purchase price of equipment furnished, wherein the buyers were entitled to damages for breach of warranty, but there was a failure of proper proof as to the amount of damages claimed by them on their counterclaim, the interests of justice require a retrial of such phase of the case. Pressure Cast Products Corp. v. Page, 261 W 197, 52 NW (2d) 898.

A judgment is not to be reversed merely because on second thought it appears that counsel did not try the case perfectly, and it will require a very clear showing of resulting injustice to move the supreme court to exercise its discretionary powers of reversal and permit the client to try the case again with the same or other counsel. Estate of Schaefer, 261 W 431, 53 NW (2d) 427.

In an action for damages to the plaintiff's automobile, where the facts gave rise to an almost irresistible inference that the defendant's employe-driver either did not keep a proper lookout or else failed to exercise proper management and control, but the special verdict inquired only as to his negligence as to lookout, and the trial court ruled after the verdict that the evidence was insufficient to sustain a finding of negligence as to lookout, the case is deemed a proper one for the supreme court to exercise its power of discretionary reversal and of granting a new trial on the ground that the real controversy has not been fully tried, although no objection was made to the form of the special verdict. Minkel v. Bibbey, 263 W 90, 56 NW (2d) 844.

In an action against an automobile liability insurer for injuries sustained in a collision with the car of the named insured, which had been taken by her son to his army camp with her consent, and which was being driven by a third person with the son's permission, wherein the defendant denied coverage, and the real question was whether such third person was driving with the permission of the named insured or "with the permission of an adult member of such assured's household," the trial court erred in overruling the plaintiff's offer of proof of material facts bearing thereon, requiring that a judgment dismissing the complaint be reversed for a new trial on the

ground that the real controversy had not been fully tried. Raymond v. Century Indemnity Co. 264 W 429, 59 NW (2d) 459.

Where the petitioner, because of a jurisdictional dispute, had no hearing on his claim filed against the estate, an order of the county court dismissing the claim is reversed under the discretionary powers of the supreme court with directions that the claim be reinstated and held in abeyance pending the outcome of the petitioner's suit in the circuit court. Estate of Landauer, 264 W 456, 59 NW (2d) 676.

Where, in an action against an insurer to recover on a fire policy covering an automobile, the insurer's trial brief raised the question of a policy defense under an exclusion clause providing that the policy should not apply while the car was subject to any mortgage not specifically declared and described in the policy, but the insurer's answer, in addition to raising issues not pressed on the trial, had merely denied that the car was protected by any policy issued by the insurer at the time of the fire, and did not sufficiently inform the plaintiff insured of the issue of such policy defense so that he offered any proof thereon, and it appeared that the real controversy had not been fully tried, a judgment for the insurer is reversed and the cause is remanded for a new trial. Lowe v. Cheese Makers Mut. Casualty Co. 265 W 365, 61 NW (2d) 317.

See note to 274.35, citing Leonard v. Employers Mut. Liability Ins. Co. 265 W 464, 62 NW (2d) 10.

See note to 274.35, citing Olson v. Milwaukee Automobile Ins. Co. 266 W 106, 62 NW (2d) 549, 63 NW (2d) 740.

Where there was no direct evidence in support of the jury's finding, but there was no other evidence which the jury was bound to believe, the supreme court would be required to indulge in much speculation of its own to hold that the fault lay with the defendant's driver rather than with the plaintiff's intestate, and the court declines in the circumstances to exercise its discretionary power to order a new trial in the interest of justice on its own motion. Starry v. E. W. Wylie Co. 267 W 258, 64 NW (2d) 833.

Even though the order for a new trial is defective as not setting forth reasons in detail, the court will not reverse if a miscarriage of justice would result. Guptill v. Roemer, 269 W 12, 68 NW (2d) 579, 69 NW (2d) 571.

Motion to dismiss the appeal granted because of the contumacious contempt of the appellants in defying the injunctional provisions in the judgment appealed from, without complying with the conditions for a stay imposed by the trial court. Flakall Corp. v. Krause, 269 W 310, 70 NW (2d) 8.

Where custody of a 12 year old child was in question, and the testimony of the child was not taken at the hearing, the supreme court reversed the decision in the interests of justice to permit the child's testimony to be taken. The child's wishes alone are not to be deemed controlling. Edwards v. Edwards, 270 W 48, 70 NW (2d) 22, 71 NW (2d) 366.

Where substantial error in several respects was committed during the trial of an action for injuries sustained by a pedestrian struck by an automobile, and such error could well have prejudiced the jury against the plaintiff, and such prejudice was indicated by the jury's finding of no damages for discomfort and pain and suffering despite uncontradicted testimony to the contrary, the supreme court will reverse the judgment under its discretionary powers. Schroeder v. Stampfel, 270 W 608, 72 NW (2d) 343.

Where there was no finding on an admitted liability for damages, the case will be returned for new trial on that question alone, even though not properly raised in the trial court or on appeal. Grinley v. Eau Galle, 274 W 177, 79 NW (2d) 797.

See note to 270.21, citing Vanderhei v. Carlson, 275 W 300, 81 NW (2d) 742.

251.10 Original writs; writs in vacation. In addition to the writs mentioned in section 3 of article VII of the constitution the supreme court shall have power to issue writs of prohibition, supersedeas, procedendo and all other writs and process not specially provided by statute which may be necessary to enforce the due administration of right and justice throughout the state; and any justice of said court in vacation shall, on good cause shown, have power to allow writs of error, supersedeas and certiorari, and also to grant injunctional orders.

251.11 Supreme court; judgments; rules; printed case. (1) The supreme court shall be vested with all power and authority necessary for carrying into complete execution all its judgments and determinations in the matters aforesaid and for the exercise of its jurisdiction as the supreme judicial tribunal of the state, agreeably to the usages and principles of law; and to make, annul, amend, or modify the rules of practice therein from time to time as it shall see fit, not inconsistent with the constitution and laws.

(2) The supreme court may by rule provide that no party in any action or proceeding before the supreme court shall be required to prepare and furnish any printed case or other printed abridgment of the record or of the proceedings theretofore had.

251.12 Issues of fact and assessments of damages. Whenever an issue of fact shall be joined or an assessment of damages by a jury be necessary in any action commenced in the supreme court the court may, in its discretion, send the same to some circuit court and it shall be there determined in the same manner as other issues of fact are tried or assessments made, and return be made thereof as directed by the supreme court.

History: Sup. Ct. Order, 262 W vi.

Comment of Judicial Council, 1952: Since the court retains its inherent power to impanel a jury it loses none of its power to try issues of fact or to assess damages. It is given complete discretion as to how these things shall be done. [Re Order effective May 1, 1953]

251.14 Decisions to be written; part of record; certified to United States court; printed for justices. The supreme court shall give their decisions in all cases in writing, which shall be filed with the other papers in the case; and such decisions and all decisions and opinions delivered by the court or any justice thereof in relation to any action or proceeding pending in said court shall remain in the office of the clerk. Every written opinion or decision of the supreme court which shall have been filed with the clerk shall constitute and be held a part of the record in the action or proceeding in which

it shall have been given and filed and shall be certified therewith to any court of the United States to which such action or proceeding or the record thereof may be in any manner certified or removed. The state printer shall print for the use of the justices so many of such decisions and opinions, and at such times, as shall be directed by them.

251.16 Opinion to be sent to trial court on reversal. Whenever the judgment or determination of any inferior court shall be reversed, in whole or in part, by the supreme court or an action or proceeding is remanded to the court below for a new trial or for further proceedings the clerk of the supreme court shall transmit to the clerk of the court below, with the remittitur, a certified copy of the opinion of the supreme court therein; and his fees therefor shall be taxed and allowed with his other fees in the case.

251.17 Proceedings in criminal cases on reversal. Whenever any judgment in a criminal action shall be removed by a writ of error to the supreme court and such court shall reverse such judgment because of any defect, illegality or irregularity in the proceedings in such case subsequent to the rendition of the verdict of the jury therein it shall be competent for the supreme court either to pronounce the proper judgment or to remit the record to the court below in order that such court may pronounce the proper judgment.

Where the state takes a writ of error from a judgment and sentence imposing a penalty of less than that required by 85.91 (2b) (b), there is no second jeopardy of punishment in violation of sec. 8, art. I, if the writ is determined in favor of the state and the mandate of the supreme court returns the defendant for sentence in accordance with the statute, or if the supreme court exercises such sentencing power itself. State v. Stang Tank Line, 264 W 570, 59 NW (2d) 800.

251.18 Rules of pleading and practice. The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice and procedure in judicial proceedings in all courts, for the purpose of simplifying the same and of promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant. Such rules shall not become effective until 60 days after their adoption. All such rules shall be printed by the state printer and paid for out of the state treasury, and the court shall direct the same to be distributed as it may deem proper. All statutes relating to pleading, practice and procedure may be modified or suspended by rules promulgated pursuant hereto. No rule modifying or suspending such statutes shall be adopted until the court has held a public hearing with reference thereto, notice of which shall be given by publication for 3 successive weeks in the official state paper, the expense of such publication to be paid out of the state treasury. Nothing in this section shall abridge the right of the legislature to enact, modify or repeal statutes or rules relating to pleading, practice or procedure. The judicial council shall act in an advisory capacity to assist the court in performing its duties under this section.

History: 1951 c. 319 s. 250a; 1951 c. 392; 1953 c. 61.

251.181 Judicial council. (1) MEMBERSHIP; APPOINTMENTS; TERMS. There is created a judicial council of 16 members as follows: A supreme court justice designated by the supreme court; a circuit judge designated by the board of circuit judges; a county judge designated by the board of county judges; a judge of a municipal or inferior court other than a county court designated by the board of criminal court judges; the chairman of the senate judiciary committee or a member of the committee designated by him; the chairman of the assembly judiciary committee or a member of the committee designated by him; the attorney general or one of his assistants designated by him; the revisor of statutes or an assistant designated by him; the deans of the law schools of the University of Wisconsin and Marquette University or a member of the respective law school faculties to be designated by said deans; the president-elect of the State Bar of Wisconsin and 3 additional members thereof selected by the association; and 2 citizens at large, appointed by the governor. The last 5 members shall serve 3-year terms except for terms beginning in 1953. Terms of members selected by the Wisconsin bar association in 1953 shall expire in 1954, 1955 and 1956 respectively. Terms of citizens at large appointed by the governor in 1953 shall expire in 1955 and 1956 respectively. The names of the members shall be certified to the secretary of state by the executive secretary. Members shall hold office until their successors have been selected. The members of the council shall receive no compensation, but shall be reimbursed from the appropriation made by s. 20.490 for expenses necessarily incurred by them in attending meetings of the council outside the county of their residence.

(2) POWERS AND DUTIES. The council shall:

(a) Observe and study the rules of pleading, practice and procedure, and advise the supreme court as to changes which will, in the council's judgment, simplify procedure and promote a speedy determination of litigation upon its merits.

(b) Make a continuous survey and study of the organization, jurisdiction and methods of administration and operation of all the courts of the state, both courts of record and

others, the volume and condition of business in said courts, the work accomplished and the results obtained.

(c) Collect, compile, analyze and publish judicial statistics.

(d) Receive, consider and in its discretion investigate suggestions from any source pertaining to the administration of justice and to make recommendations.

(e) Keep advised concerning the decisions of the courts relating to the procedure and practice therein and concerning pending legislation affecting the organization, jurisdiction, operation, procedure and practice of the courts.

(f) Recommend to the legislature any changes in the organization, jurisdiction, operation and methods of conducting the business of the courts which can be put into effect only by legislative action.

(3) ORGANIZATION. (a) The council shall elect a chairman and vice chairman.

(b) The council may promulgate and modify rules for the conduct of its proceedings in the exercise of its powers. The council may meet at such time and place as it may determine but at least once every 3 months. It shall meet upon call of the chairman or a call signed by 5 members of the council. Eight members shall constitute a quorum.

(c) The council may appoint regular and special committees of its members to investigate and report upon any matters relating to its duties. The council or any committee thereof when so authorized by the council is empowered to hold public hearings at such times and places within the state as may be determined. Any member of the council or any committee thereof shall have the power to administer oaths to persons testifying before the council or committee. By subpoena issued over the signature of its chairman or acting chairman and served in the manner in which circuit court subpoenas are served, the council or any committee when authorized by the council, may summon and compel the attendance of witnesses. If any witnesses subpoenaed to appear before the council or committee thereof shall refuse to appear or answer inquiries propounded, the council or committee shall report the facts to the circuit court of Dane county and it shall be the duty of such court to compel obedience to such subpoena.

(d) The council may determine the qualifications of and appoint an executive secretary and such technical and clerical help as it may deem necessary, without regard to the provisions of chapter 16. The council shall be provided with adequate office space in the capitol building.

(e) The council may call upon any department of the state or any county or municipality thereof for such facilities and data as may be available, and such department shall co-operate with the council to the fullest extent. The clerk, judge or justice of each court of the state shall furnish such statistics in such form as the council directs.

(f) The council shall submit to the legislature and the governor a biennial report in February of each odd-numbered year of its proceedings and of the work of the various courts of the state, the condition of business therein and its recommendations supporting any bills introduced at its request. It may during the legislative session make such further and supplemental reports as it may deem proper or as may be requested by the legislature. The council may publish such reports as it may consider necessary.

History: 1951 c. 392; 1953 c. 162; 1957 c. 610.

251.19 Attorney general may have cases printed. In all state cases to be argued in the supreme court by the attorney general he may, in his discretion, require to be printed by the state printer, when necessary, copies of or abstracts from the record and his arguments and brief, and in any criminal case, the case and brief or briefs of any poor and indigent defendant; and the account therefor shall be paid out of the state treasury and charged to the appropriation created by s. 20.180 (2) of the statutes for the attorney general.

251.20 Seal. The supreme court shall have a seal and may direct and from time to time alter the inscription and devices thereon; and the director of purchases shall procure such seal as may be ordered. The seal of the court now in use shall be the seal thereof until another shall be provided hereunder.

251.21 Duties of clerk. It shall be the duty of the clerk of the supreme court:

(1) To have and keep the custody of the seal of the court and all books, records and papers thereof, and of all writs, proceedings and papers in any action therein.

(2) To receive and safely keep and pay over or deliver, according to law or the order of the court, all moneys or property deposited or placed in his possession as such clerk.

(3) To furnish to any person requiring the same certified copies of the papers, records, opinions and decisions in his office, upon receiving his fees therefor.

(4) To furnish to the reporter copies of all opinions required by him.

(5) To issue writs and process to persons entitled to the same by law or the rules and practice of the court.

(6) To make a calendar of cases for argument at such time and in such manner and form as the court shall direct.

(7) To give certificates to attorneys on their admission to practice in the court, on receiving the fees therefor; but the fee for a certificate of admission of any graduate of the law department of the University of Wisconsin or Marquette University at Milwaukee shall not exceed $1.

(8) To perform all other duties required by law or the rules and practice of the court or which may be directed by the court.

History: 1955 c. 652.

251.22 Fees. The supreme court shall fix such fees for the services of the clerk as to the court shall seem proper, except when otherwise provided by law. Such fees shall be deposited in the general fund pursuant to s. 20.951.

History: 1955 c. 610.

251.23 Costs in supreme court. (1) DISCRETIONARY ITEMS. In the supreme court, excepting criminal actions, costs shall be in the discretion of the court. In any civil action or proceeding brought to the court by appeal or writ of error, the prevailing party shall recover costs unless the court shall otherwise order, and such costs, unless fixed at a lower sum by the court, shall be as follows: The fees of the clerk, $25 attorney's fees, the fees of the clerk below for transmitting and certifying the record, including the sum paid for necessary copies of the minutes of the reporter procured for record preparatory to an appeal, settling the bill of exceptions and the sum paid for printing cases and briefs not exceeding $2 per page and in all not exceeding 150 pages.

(2) MOTIONS FOR REHEARING. When a motion for a rehearing is denied the prevailing party may be allowed attorney's fees not exceeding twenty-five dollars, as the court shall direct, the clerk's fees and necessary disbursements which shall be taxed and inserted in the judgment; when such motion is granted the same costs may be allowed and shall abide the event of the action.

(3) DAMAGES; COSTS DOUBLED. The court may adjudge to the defendant in error or respondent on appeal in any civil action, on affirmance, damages for his delay in addition to interest, not exceeding ten per cent on the amount of the judgment affirmed, and may also in its discretion award to him double costs.

(4) NOTICE OF TAXATION. The clerk shall tax and insert in the judgment, on the application of the prevailing party, upon four days' notice to the other, the costs, together with the damages allowed, if any. The disbursements shall be stated in detail and verified by affidavit filed.

(5) EXECUTION FOR COSTS. On request of the party entitled thereto the clerk shall issue execution for costs taxed and damages allowed, directed to the sheriff of any county designated by such party; and the sheriff shall levy and collect the same and pay over to said clerk his costs and the remainder to the party entitled thereto, and shall return the execution with his doings thereon to the said clerk within ninety days from its date. If such execution be returned satisfied the clerk shall enter satisfaction of the judgment. Alias executions may in like manner be issued from time to time until such judgment be collected.

History: 1951 c. 69.

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

In reversing a judgment for the defendant, but remanding the cause for a new trial because of gross and inexcusable misconduct of the plaintiff's attorney in argument to the jury, the supreme court, in the exercise of its discretion under (1), directs that no costs be recovered by either party on this appeal. Blank v. National Casualty Co. 262 W 150, 54 NW (2d) 185.

Where the defendants failed to assert in the trial court and in their original argument on appeal their contentions made on rehearing requiring modification of the judgment, the costs usually allowed to the prevailing party on an appeal will not be allowed to them. Plainse v. Engle, 262 W 506, 56 NW (2d) 89.

Where there was no appeal from a judgment dismissing the complaint as against a certain party, nor motion for review in respect to the same, but such party filed a brief and presented oral argument in direct opposition to the position taken by appellant appealing from the judgment in other respects, such appellant, prevailing thereon, is entitled to tax costs against such party, as well as against certain other parties. Wisconsin Nat. Gas Co. v. Employers Mut. L. Ins. Co. 263 W 633, 58 NW (2d) 424.

Where an appellant is unsuccessful on the principal issue presented on appeal, but does obtain a modification of some benefit of the judgment appealed from on a secondary issue, and the major portions of the appellant's brief and appendix are devoted to such principal issue, it would be inequitable to permit him to tax the printing of such portions of the brief and appendix as costs on the appeal. Morris v. Resnick, 268 W 410, 67 NW (2d) 848.

Where an appeal from the fixing of attorney's fees in an estate appears frivolous, double costs are assessed under (3). Estate of Bair, 272 W 14, 74 NW (2d) 639.

RULES OF PRACTICE IN THE SUPREME COURT.

[Adopted June 10, 1942, effective July 1, 1942, as amended]

Revisor's Note: The rules of the supreme court governing practice in that court are printed here at the end of chapter 251, entitled "Supreme Court" because those rules have the force of law, are in constant use and should be easily available. The court's numbering and headings are retained, but for convenience in indexing and for reference, these rules are given additional numbers (in brackets) in harmony with the decimal numbering system used in the statutes. The court's comments on these revised rules are printed in the 1950 Wisconsin Annotations, preceding 251.251. The supreme court rules in force in 1930 are printed in the 1930 Wisconsin Annotations, beginning at page 1797, with extensive notes.

CHAPTER I.

Record and Return.

[251.251] **Rule 1.** (As amended January 1, 1958) The record, or transcript thereof, shall be filed with the clerk of the supreme court and shall consist of such of the following items as are applicable to the appeal and be arranged as follows:

(1) Summons or other process.

(2) Proof of service.

(3) Complaint, petition, relation, or affidavit initiating the proceeding, with the date of service.

(4) Answer or demurrer, with date of service.

(5) Reply, demurrer, election to take issue, with date of service.

(6) Orders material to the appeal, and papers upon which they are based.

(7) The verdict, findings of the court or referee, with orders based thereon, and opinion of the court, if any.

(8) Final determination.

(9) Any order made after judgment, material to the appeal, and the papers upon which the same is based.

(10) Bill of exceptions. Each exhibit shall have on it the name of the plaintiff and defendant and each photograph attached to or returned with the bill of exceptions shall have in addition either upon its face or upon its reverse side or upon a slip attached to it, a statement giving the page of the record where the photograph is referred to, a statement of the position of the camera, distance from the object photographed, the direction in which the camera was pointed and such further information as may be appropriate.

(11) Writ of error or notice of appeal, with the bond or undertaking.

(12) Certificate of the clerk under the seal of the court from which the appeal is taken, certifying that they are the original papers or copies as the case may be, and that they are transmitted pursuant to the appeal. No further certificate or attestation is necessary. Such record or transcript shall be consecutively paged on the left-hand margin.

Where written motions after verdict, and a written decision thereon, are of record here, it is immaterial that they are not incorporated into the bill of exceptions, and the supreme court may properly review the evidence on appeal although the motions are not so incorporated. Jaster v. Miller, 269 W 223, 69 NW (2d) 265.

In the absence of a bill of exceptions, the supreme court can consider only whether the pleadings and findings sustain the judgment appealed from. Town of Madison v. City of Madison, 269 W 609, 70 NW (2d) 249.

The charge to the jury properly constitutes part of the record brought up on appeal, without the necessity of being incorporated in a bill of exceptions. Klassa v. Milwaukee Gas Light Co. 273 W 176, 77 NW (2d) 397.

It is the duty of a lawyer taking an appeal to personally supervise the making up of the record and its certification and transmittal to the supreme court, and he should not be permitted to escape the responsibility resulting from a faulty record being transmitted by attempting to blame the clerk of the trial court for such failure. Estate of Eannelli, 274 W 193, 80 NW (2d) 240.

[251.252] **Rule 2.** The record or transcript shall not be accompanied by any paper, other than those specified, or which is not part of the record proper.

[251.253] **Rule 3.** The return to any writ of error or certiorari shall be by certified copy of the record unless the trial court shall order the original papers to be returned.

[251.2531] **Rule 3a.** (Adopted April 1, 1944) When the questions presented for decision by an appeal can be determined without an examination of all the pleadings, evidence and proceedings in the court below, in lieu of a record and transcript thereof as required by Rule 1, the parties may prepare and sign a statement of the case showing how the questions for decision arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions involved by the supreme court. The statement shall include a copy of the judgment or order appealed from, a copy of the notice of appeal with under-

taking (or evidence of deposit or waiver of undertaking), filing date and a concise statement of the points to be relied upon by the appellant. If the statement conforms to the truth, it together with such additions as the court may consider necessary fully to present the questions raised by the appeal shall be approved by the trial court and shall then be certified to the supreme court as the record on appeal.

[251.254] **Rule 4.** (As amended April 1, 1944, Sept. 1, 1954 and March 1, 1958) The appellant or plaintiff in error shall cause the record or transcript to be filed in this court within 20 days after perfecting the appeal or filing the writ. The bill of exceptions may be filed later, but not later than 10 days after the bill has been settled. Any party intending that there be a supplemental return of a bill of exceptions shall so notify the clerk of this court and the opposite party in writing within 10 days after the mailing by the clerk of notice that the record has been filed and shall state the last day on which the proposed bill of exceptions can be served. Upon any extension of time to serve the bill, he shall notify the clerk and the opposite party thereof.

Where it appeared that the return to the supreme court was not made in the instant case until February 11, 1952, and that the admission of service of the notice of appeal was dated December 14, 1951, but that such admission of service was actually signed on February 8, 1952, a motion to dismiss the appeal for alleged failure to make such return within the 20 days required is denied. Hirsch v. Smith, 262 W 75, 53 NW (2d) 769.

Where it appeared that settlement negotiations were in progress and that the appellants delayed the return of the record to the supreme court until after the time required by Rule 4 because such return would be unnecessary if a settlement were reached, and the respondent did not assert that he had been prejudiced by such delay, dismissal of the appeal for failure to comply with the rule is denied. Blaisdell v. Allstate Ins. Co. 1 W (2d) 19, 82 NW (2d) 886.

[251.255] **Rule 5.** (As amended Sept. 1, 1954) If a record or transcript is defective, either party may move for an order to correct the defect.

CHAPTER II.

Briefs and Appendices.

[251.26] Rule 6. In calendar causes the appellant or plaintiff in error shall print a brief and appendix in conformity with the following rules:

(1) The front flyleaves of every brief shall contain an index including a synopsis or brief resume of the argument with page references followed by a list of all statutes, cases and other authorities referred to, the cases alphabetically arranged, together with references to the pages where the statutes, cases and other authorities are cited. (For illustration see 200 Wis. 530.)

(2) The brief shall be entitled in the cause, and following the title there shall be a statement whether an order or judgment is appealed from, the name of the trial court and the name of the trial judge, the date of the commencement of the action and the date when the judgment or order appealed from was entered. On the following page the question or questions involved on appeal or writ of error shall be stated briefly without detail or discussion, without names, dates, amounts or particulars of any kind. Following each question there shall be a statement indicating whether the question was affirmed, negatived, qualified or unanswered by the court below. If a qualified answer was given to the question the appellant or plaintiff in error shall indicate briefly the nature of the qualification or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court below. The questions and statements in their entirety should ordinarily not exceed 20 lines and should rarely exceed one page and no other matter shall appear on the page with the statement. (In substance the question or questions should contain the type of matter found in the syllabus to a case. The question or questions should state what is to be decided,—the syllabus states what has been decided.)

(3) After the statement of the questions involved, the facts shall be stated in a clear and concise manner eliminating all immaterial details. Reference shall be made to the page of the appendix for each statement of fact made in the brief as to which there is a possibility of dispute. If reference is made to the record, the page of the record shall be given. When a question raised upon appeal involves a statute so much thereof as is necessary to a decision of the case shall be printed at length.

(4) The statement of facts shall be followed by argument in support of the position of the appellant or plaintiff in error with citations of authority.

(5) (As amended April 1, 1944) In addition to the brief, the appellant or plaintiff in error shall print an appendix or in lieu of it the statement of the case (Rule 3a). The appendix shall contain:

(a) The opinion or decision of the trial court.

(b) Such part and only such part of the pleadings, findings, verdict, judgment or order sought to be reviewed as may be material in the consideration on appeal of the questions stated.

(c) (As amended April 1, 1944) An abridgment of the bill of exceptions or record as the case may be but only so much thereof as is necessary and material to a consideration of the questions involved. The abridgment of the testimony shall be in narrative form with marginal page references to the record. Asterisks or other appropriate means shall be used to indicate omissions in the instructions of the court or in the testimony of witnesses. The names of the witnesses whose testimony is referred to shall be given and shall be properly indexed at the end of the appendix.

(d) All exhibits whether printed or not shall be indexed at the end of the appendix, with reference to the page of the record and if printed in the appendix, the page of the appendix where the same may be found. The nature of the contents of the exhibit shall be briefly stated in the index.

(e) The brief and appendix shall be bound together unless the appendix exceeds 100 pages, in which case it may be bound as a separate volume.

Where the appellants' counsel has not supplied either an appendix as provided by Rule 6 or a statement of the case as provided by Rule 3a, the supreme court assumes that the record supports the trial court's findings of fact. Peterson Cutting Die Co. v. Bach Sales Co. 269 W 113, 68 NW (2d) 804.

[251.261] Rule 7. The brief of the respondent shall contain:

(1) Upon the front flyleaf an index including a synopsis or brief resume of the argument followed by a list of all statutes, cases and other authorities referred to, the cases alphabetically arranged, together with references to the pages where the statutes, cases and other authorities are cited. (For illustration see 200 Wis. 538.)

(2) The title to the cause following which there shall be a statement of the questions involved so far as the respondent disagrees with the statement of the questions involved made by the appellant or plaintiff in error.

(3) A statement of such facts and only such facts as are necessary to correct or amplify the statement of facts made by the appellant or plaintiff in error in his brief. Reference shall be made to the page of the appendix or to the record for each statement of fact made. The propositions and argument of the appellant or plaintiff in error shall be replied to so far as practicable in the order in which such propositions or argument are presented in the brief of the appellant or plaintiff in error. Additional propositions may be advanced when necessary to a complete presentation of respondent's position.

(4) (As amended April 1, 1944) A supplemental appendix containing an abridgment of such portions of the bill of exceptions or record as the case may be which the respondent deems necessary and material to a consideration of the questions involved and which have not been printed in the appendix of the appellant or plaintiff in error. As to form and substance the supplemental appendix shall conform to Rule 6 (5) (c).

(5) Such exhibits or parts of exhibits not printed by the appellant or plaintiff in error as respondent may desire to bring to the attention of the court. These shall be indexed, the page of the record where they are described given and the nature of the contents of the exhibit shall be briefly stated in the index at the end of the appendix.

(6) Ordinarily the brief and supplemental appendix shall be bound in one volume. If the supplemental appendix exceeds 100 pages it may be bound as a separate volume.

[251.262] Rule 8. The appellant or plaintiff in error may file a reply brief and set forth in an additional appendix thereto such parts of the record or such exhibits as he may wish the court to read in view of the parts printed by the respondent in the supplemental appendix to his brief.

[251.263] Rule 9. Reference to the appendix printed by the appellant or plaintiff in error may be indicated by A-Ap. p. 2. The appendix printed by the respondent may be referred to as A-R. p. 2.

[251.264] Rule 10. Costs will be allowed of course only for the printing of briefs which do not exceed 50 pages exclusive of the appendix. Costs for printing pages of a brief in excess of 50 pages will be allowed only upon special permission of the court, application for which shall appear on the flyleaf of the brief or following the index. Where it satisfactorily appears that the rules relating to the preparation and printing of a brief, including the appendix, have been flagrantly disregarded or there is an absence of a good-faith attempt to comply therewith the court may in its discretion deny to or impose costs against the offending party or strike his brief from the files.

Permission to tax printing costs for the whole of the respondents' brief in excess of 50 pages denied as to that portion devoted to the respondents' unsuccessful motion to review a certain finding of the trial court. Adoption of Morrison, 267 W 625, 66 NW (2d) 732.

[251.265] Rule 11. (As amended April 1, 1944) Briefs, appendices and statements of the case shall be printed plainly with black ink in type not smaller than 10 point nor larger than 12 point and leaded with a 2 point lead, on eggshell paper, properly paged

at the top, with the printed portion of a page 7 inches long and 3 and one-half inches wide centered in a page trimmed to a size 7 inches wide by 9 inches long and saddle-stitched when practicable, bound in a paper or cloth cover, having the title and calendar number of the case and designation of the brief printed in appropriate type on the outside, and shall be signed by counsel presenting the same. If special permission is given to file typewritten memorandum or reply briefs, they must conform to the size page above stated, viz.—7 by 9 inches.

CHAPTER III.

Service of Papers.

[251.27] **Rule 14.** Service of all papers may be made by mail, postage prepaid, properly addressed to the person to be served; 2 days being allowed for transmission where the route is wholly by railroad and an additional day for every 50 miles other than by railroad.

[251.271] **Rule 15.** Every notice of a motion shall be served on the opposite party at least 8 days before the making of the motion.

[251.272] **Rule 16.** (As amended April 1, 1944 and March 1, 1958) Within 10 days after the commencement of the August term, the clerk shall prepare a list of the causes then on the calendar, arranging all civil causes in the order of their filing, and arranging all criminal causes in their order at the foot. During the term he shall when directed by the court prepare a list of the causes subsequently filed.

Not less than 60 days before any case shall be set for argument the clerk shall send to every attorney appearing in a case a warning notice that his case is subject to call for argument on and after a stated date. Not less than 30 days before the time set for argument of cases on an assignment, the clerk shall send to each attorney appearing in any case on the assignment a list of such cases stating the day on which each case will be called for argument.

[251.273] **Rule 17.** (As amended September 17, 1942 and March 1, 1958) Not more than 40 days after the record is filed in a cause in which there is no bill of exceptions or in which the bill of exceptions is filed with the record, or not more than 40 days after the bill of exceptions is filed in a cause in which such a bill is settled after the record is filed, the appellant or plaintiff in error shall serve 3 copies of his brief and appendix upon the opposite party. Upon the filing in the supreme court of the record the clerk shall mail a notice of such filing to the attorneys of record in the cause. Not more than 30 days after the service of appellant's or plaintiff in error's brief and appendix, the opposite party shall serve upon the appellant or the plaintiff in error 3 copies of his brief and supplemental appendix, if any. Not more than 15 days after service of the brief of the opposite party, the appellant or plaintiff in error may serve a reply brief and additional appendix, if any, upon the opposite party. No further brief shall be served or received except as provided unless permission be first granted. Twenty copies of each brief and each appendix, together with proof of service thereof, shall be filed not later than 5 days after the time within which it is required to be served.

[251.274] **Rule 18.** (Adopted April 1, 1944) In criminal cases except where the state is appellant, service of brief and appendix of appellant or plaintiff in error shall be upon the attorney-general. Briefs and appendices in criminal cases, including service thereof, shall be governed by the rules that apply to civil cases except that appendices may be dispensed with by stipulation of the parties or by order of the court.

[251.276] **Rule 20.** Any cause on the state calendar may be put on any assignment by consent or when either party has given 10 days' written notice to the other party before the assignment has been ordered made up.

[251.277] **Rule 21.** The time prescribed by these rules for any act, except for the making of a motion for a rehearing, may be enlarged by the court for cause, on motion.

CHAPTER IV.

Calendar and Assignments.

[251.28] **Rule 22.** (As amended April 1, 1944 and April 12, 1949) All causes in which the record shall have been filed on and after March 1 in each year and prior to March 1 in the succeeding year, are assigned to the August calendar of the current year in the order in which the records are filed in the office of the clerk of the court. Any cause may be placed upon the current calendar or advanced for hearing at any time in which it is shown that the interests of the state, the people at large, or of any municipality are

affected, or an important constitutional question is seriously raised, or an extraordinary exigency is involved, and it is further shown that delay would be prejudicial to the accomplishment of justice.

[251.281] **Rule 23.** (As amended April 1, 1944) Actions and proceedings brought under the original jurisdiction of this court shall be heard when and as directed by the court.

[251.282] **Rule 24.** [*Repealed April 1, 1944*]

[251.283] **Rule 25.** When a cause on the state calendar shall have been submitted by one party, the adverse party may have it put at the foot of any assignment.

[251.284] **Rule 26.** (As amended April 1, 1944) Cases on the calendar not reached for argument during the term shall stand continued and be considered as at the head of the next calendar.

[251.285] **Rule 27.** [*Repealed April 1, 1944*]

[251.286] **Rule 28.** The calendar causes shall be assigned for argument at such time and in such order as the court may direct.

CHAPTER V.

Submission of Causes.

[251.30] **Rule 30.** Causes may be submitted on either or both sides on printed briefs and appendices, seasonably served and filed, but the court may, in its discretion, require oral arguments.

[251.31] **Rule 31.** If neither side of a cause is submitted or presented when reached for argument, it will be dismissed or continued, in the discretion of the court.

[251.32] **Rule 32.** When a cause is submitted or presented by counsel for appellant or plaintiff in error, but not by the opposing party, the judgment or order appealed from may be reversed as of course, without argument.

[251.33] **Rule 33.** When a cause is submitted or presented by counsel for the respondent or defendant in error, but not by the opposing party, the judgment or order appealed from will be affirmed as of course, without argument.

Where respondent, other than serving and filing notice of his motion to review, has done nothing in furtherance of his cause and where another respondent, the opposing party, has moved to dismiss the motion to review and has presented his cause, motion to dismiss will be granted. State ex rel. Schmidt v. Krull, 257 W 184, 43 NW (2d) 241.

[251.34] **Rule 34.** (As amended January 1, 1958) In opening the oral argument appellant shall briefly state the nature of the action, the result in the court below, and the points upon which reversal is sought. No council shall read in extenso from briefs or written argument, nor testimony from the record. Decisions relied upon may be stated in substance but not read.

A question as to inconsistency of the special verdict, not raised by the defendant's motion for a new trial, and not mentioned in the defendant's brief on appeal but only on the oral argument, was not raised timely and is not before the supreme court on the appeal. Kuecker v. Paasch, 260 W 520, 51 NW (2d) 516.

[251.35] **Rule 35.** (As amended January 1, 1958) Except by leave of the court, oral argument is limited to half an hour on each side. If there are several parties with differing interests on the same side, three-quarters of an hour will be allowed for the argument on behalf of all such parties. Any request for additional time shall be presented to the clerk by letter (copy to be sent opposing counsel), not less than 10 days before the time set for argument, setting forth in detail reasons why the additional time requested should be allowed. Oral argument on a cause will not be heard on behalf of any party for whom no brief has been filed, unless otherwise ordered by the court.

[251.36] **Rule 36.** On each day of a session of the court cases are subject to call as specified in the notice of call for argument. All cases not called on the day for which they are set will be called in their order on succeeding days.

CHAPTER VI.

Motions.

[251.37] **Rule 37.** Every motion for a rehearing shall be filed within 20 days after the decision, and the clerk shall retain the papers till the expiration of such period, unless all parties interested consent to sooner remit the same.

[251.38] **Rule 38.** The papers in any cause wherein a motion for a rehearing is made shall be retained until the motion shall have been disposed of.

[251.39] **Rule 39.** A motion for a rehearing shall not be argued orally, but shall be submitted on printed arguments, of which 20 copies shall be furnished to the clerk.

[251.40] **Rule 40.** The printed arguments in support of the motion shall be served and filed within 30 days after the decision, and in default thereof the motion shall be deemed to have been waived.

[251.41] **Rule 41.** The printed arguments in opposition to the motion shall be served and filed within 40 days after the decision, at which date the motion shall be deemed to have been submitted.

[251.42] **Rule 42.** No motion as to any final determination made by the court, except a motion to correct mistakes in the record of this court, will be heard unless made within 20 days after such determination.

[251.43] **Rule 43.** (As amended March 1, 1958) Motions will be heard before the call of the calendar on Tuesdays and Fridays during the sessions of the court. Motions noticed for a day when the court is not in session will be heard on the first motion day thereafter. Before the opening of court on the day of the hearing, the party making the motion and each other party desiring to support or oppose it, shall present to the court 8 copies of a memorandum of authorities which may be typewritten. Each memorandum shall contain a summary of the material facts and citations of the authorities relied upon. The party making the motion shall supply one copy of his memorandum to each opposing party at the same time that the notice of motion or order to show cause is served. One copy of each other memorandum to be presented to the court shall be supplied to each opposing party at least 48 hours before the hearing on the motion. Where the moving party relies only on a statute or rule of court, referred to in his moving papers, he need not present a separate memorandum if he presents 8 copies of his moving papers to the court.

[251.431] **Rule 43a.** In divorce actions pending in this court, on appeal perfected after July 1, 1910, no allowances for suit money, counsel fees or disbursements in this court, nor for temporary alimony or maintenance of the wife or children during the pendency of the appeal will be made in this court.

Such allowances, if made at all, shall be made by the proper trial court upon motion made and decided after the entry of the order or judgment appealed from and prior to the return of the record to this court, provided, that if such allowance be ordered before the appeal is taken such order shall be conditioned upon the taking of the appeal and shall be without effect unless and until the appeal be perfected.

An order requiring the husband, pending his appeal from a judgment of divorce, to pay to the wife the sum of $75 a month as a temporary allowance, not to be deducted from the final amount to be awarded to the wife for a division of property in lieu of alimony, was within the discretion of the trial court. Barrock v. Barrock, 257 W 565, 44 NW (2d) 527.

An order of the trial court for the allowance of attorney fees and costs on appeal which did not specify the amount allowed but ordered a later determination of it did not comply with the rule. Leach v. Leach, 266 W 223, 63 NW (2d) 73.

An order denying an application that the divorced husband be required to pay the costs and reasonable attorney fees to be incurred by the divorced wife in prosecuting her appeal is affirmed since it would not have been an abuse of discretion if such order had been based on the ground that the wife possessed sufficient means of her own to enable her to prosecute the appeal, instead of being based on a different and untenable ground. Peck v. Peck, 272 W 466, 76 NW (2d) 316.

CHAPTER VII.

Costs and Penalties.

[251.44] **Rule 44.** No costs shall be taxed for printing briefs and appendices unless affirmative proof is made that they were served and filed within the time prescribed by the rules. (See also Rule 10 and sec. 251.23 Stats.)

[251.45] **Rule 45.** No costs of printing shall be allowed for any brief containing a manifest miscitation of authority or a palpably misleading quotation from any opinion or textbook, not corrected by the author before submission of the cause.

[251.46] **Rule 46.** (As amended April 1, 1944 and March 1, 1958) If the brief and appendix of the appellant or plaintiff in error are not served and filed within the time and in the manner required by these rules, the court may in its discretion dismiss the appeal or may permit late filing upon terms.

[251.47] **Rule 47.** Where a party fails to procure and file the proper return, the opposing party may move to dismiss the writ or the appeal, with taxable costs, including attorney's fees of $25.

In case such motion be made during a recess of the court the chief justice may make the proper order or judgment thereon with the same effect as if made by the court in session.

[251.48] **Rule 48.** When a proper return shall have been filed before the final determination of a motion to dismiss for want of such return, the motion may be denied upon payment of costs by the opposite party, in the discretion of the court, not exceeding $25.

[251.49] **Rule 49.** When a supplemental return is ordered upon application of a party, and the defect in the original return is attributable to the fault of the opposing party, the court may, in its discretion, order costs to be paid to the moving party, not exceeding $25; payment to be enforced as directed.

[251.50] **Rule 50.** No costs shall be taxed for printing any brief containing matter disrespectful to this court, or the trial court, or to opposing counsel; and the court will not consider such a brief, and of its own motion will strike it from the files.

[251.51] **Rule 51.** If an attorney, in addressing the court, indulges in language disrespectful to this court, or to the trial court, or to the opposing counsel or party, he will be prohibited from further addressing the court in the cause, without prejudice to any other proceeding to inflict punishment for such misconduct.

[251.52] **Rule 52.** When a motion for a rehearing, or a motion in the nature of a motion for a rehearing, is denied, costs will be allowed to the prevailing party, consisting of clerk's fees, necessary disbursements, and an attorney's fee, to be fixed in view of the facts and circumstances of each case, but not to exceed the sum of $25.

[251.53] **Rule 53.** When it shall be necessary on a motion for a rehearing to examine any question not theretofore presented in the briefs, or to examine further any question theretofore presented, and the motion be denied, the attorney's fee of the prevailing party shall not exceed $10, unless a question of more than ordinary difficulty be presented.

CHAPTER VIII.

MISCELLANEOUS.

[251.54] **Rule 54.** Attorneys and guardians ad litem, appointed by the court below, will be deemed to continue in service until the contrary appears.

[251.55] **Rule 55.** All causes which have been pending in this court for two years, wherein no record has been filed, may be dismissed without notice, upon payment of the clerk's fees.

[251.56] **Rule 56.** (As amended March 1, 1958) (1) Except as otherwise provided by law, the fees to be charged by the clerk of this court are as follows:

(a) For filing and docketing each case on appeal, a writ of error, or any other proceeding, $15; a petition for leave to commence an original action or an application to docket and dismiss, $5; each motion for rehearing, $10.

(b) For making a copy of any record, paper, or opinion of the court, and comparison thereof, 40 cents for each page.

(c) For comparing for certification a copy of any record, entry or paper when such copy is furnished by the person requesting its certification, 10 cents for each page.

(d) For comparing any photographic reproduction of any original record, entry or paper, when furnished by the person requesting its certification, 5 cents for each page.

(e) For a certificate and seal, $1.

(f) For an admission to the Bar and certificate under seal, $16.

(2) The state is exempt from payment of the above fees, except that the clerk shall not be obligated to supply the state with free copies of opinions.

(3) The clerk may refuse to file, docket, record, certify or render any other service, without prepayment of the fees in sub. (1).

[251.57] **Rule 57.** The appellant shall have the right to open and close the argument in all cases, whether legal or equitable.

[251.58] **Rule 58.** When a judgment is reversed, the cause, if tried by the court, will ordinarily be remanded for final judgment, and if tried before a jury, for a new trial; but if it appear in a jury cause that there has been a full trial and that justice will be best subserved by the direction of a judgment, the cause will be remanded for final disposition according to the right of the matter, whether such judgment will have the formal verdict of a jury as a basis therefor or not.

[251.59] **Rule 59.** Upon a continuance for favor, the opposing party shall be entitled to costs, not exceeding $25, unless such continuance shall have been made necessary through the fault of such party, in which case such party may be denied costs, and costs may be imposed on him, in the court's discretion, for the benefit of the moving party, not exceeding $25.

[251.60] **Rule 60.** For infraction of any of the rules of this court, for which no penalty is expressly provided, the offending party may be mulcted in costs, in the court's discretion, for the benefit of the opposing party.

[251.61] **Rule 61.** If through mistake, inadvertence or excusable neglect the appeal shall not have been perfected, or the bill of exceptions be not properly certified so as to permit a decision of the questions presented for review, the appellant will be given reasonable opportunity to correct the error, on such terms as may be just.

[251.62] **Rule 62.** [*Repealed April 1, 1944*]

[251.63] **Rule 63.** All maps, exhibits or models constructed or intended for the mere purpose of illustrating the issues in any action or proceeding pending in this court shall be placed free of expense in the custody of its clerk prior to the case being set down for argument and, without expense to such clerk, taken away within 30 days after expiration of the time for retention of the record in this court and in default thereof the same shall be turned over to the officer of the court for destruction, or other permanent disposition.

[251.64] **Rule 64.** In cases where the order or judgment is affirmed, opinions will not hereafter be written unless the questions involved be deemed by this court of such special importance or difficulty as to demand treatment of an opinion. A table of the cases affirmed without opinion, containing the titles, statement of the nature of each, the courts from which they came, dates there and here decided, and names of respective counsel, shall be printed in the Reports.

[251.65] **Rule 65.** (As amended December 22, 1947) Applications by attorneys of other states for admission to this court, together with the proofs entitling them to admission, must be filed with the clerk at least 60 days before they are acted upon. Each applicant for admission to the bar pursuant to the provisions of section 256.28 (3) shall at the time of filing his application, deposit with the clerk of the supreme court currency, draft, cashier's check or certified check in the sum of $50 payable to bearer, to cover the expenses of such investigation as may be necessary to satisfy the court that he is of good moral character and has been engaged in the actual practice of the law in the state or territory from which he comes for the required period. Such portion of the deposit as is not used for the purpose stated will be returned to the applicant.

Application blanks will be furnished by the clerk upon request.

[251.651] **Rule 65a.** (Adopted March 10, 1951; amended March 17, 1953) Service as judge of a court of record of any state or territory or the District of Columbia or of the United States, legal service in the Treasury Department of the United States or State Department of Taxation, and teaching in any law school which is approved by the council of the American Bar Association on legal education and admission to the bar, shall be deemed to be actual practice of law for the purpose of this section, and such law teaching or such legal service done in this state as well as in such other state or territory or District of Columbia shall be counted under the 5 and 8 year tests provided in subsection (3) of s. 256.28 of the Wisconsin statutes.

[251.652] **Rule 65b.** (Adopted March 10, 1951) From and after January 1, 1952, each applicant for admission to practice as an attorney of the courts of record of this state shall pay the sum of $15 before he shall be admitted to such practice; provided, however, that the examination fee provided in subsection (6) of section 256.28 of the Wisconsin statutes shall be credited upon such payment when the applicant for such examination shall successfully pass the same. The fee provided herein shall be in addition to all fees otherwise provided by statute or the rules of this court and shall be paid into the general funds of the state.

[251.66] **Rule 66.** The foregoing rules shall take effect on the first day of July, 1942, except that counsel appearing in cases on the August, 1942 calendar may at their option in the preparation of those cases conform to the rules as they were prior to the revision. In cases appearing on the January, 1943 calendar and subsequent calendars, all briefs and appendices shall be prepared in conformity with these rules.

On and after July 1, 1942, all formal rules of practice in this court heretofore adopted shall cease to be in force but rules of practice established in the decisions of the court not inconsistent with these rules shall remain in force as heretofore.