

## CHAPTER 253

## COUNTY COURTS

253.01	County court established	253.16	Where court to be held
253.015	Shawano—Menominee county court.	253.164	County court terms
253.02	Branches of county court.	253.165	When court to be held
253.05	Judges of county court; election	253.17	Adoption of court rules
253.055	Age and other requirements for county judges	253.18	Administration of work in multibranch courts
253.06	Term of office.	253.195	Retired judges, service
253.07	County judges' salaries.	253.26	Presumption in favor of orders
253.08	Expenses	253.30	Clerk of circuit court; duties, powers.
253.10	Probate jurisdiction	253.31	Appointment and compensation of registers in probate
253.11	Civil jurisdiction.	253.32	Duties of registers in probate
253.12	Criminal trial jurisdiction	253.33	Powers of registers in probate
253.13	Jurisdiction of children and of adoptions	253.34	Fees in probate matters
253.135	Two counties; jurisdiction retained.	253.344	Register in probate may be appointed deputy clerk
253.14	May issue process	253.345	County court reporters as registers in probate
253.142	Disqualification of judge by relationship or interest; procedure	253.35	Appointment of reporter and assistants.
253.143	Clerks, etc., not to be appraisers.	253.36	County court reporters as deputy clerks
253.145	Matters to circuit court if beyond county court jurisdiction	253.40	Office and records to be kept at county seat.
253.15	Seals.	253.41	Probate court commissioner.

**253.01 County court established.** There is established in each county a county court which is a court of record with the jurisdiction specified in ss. 253.10 to 253.14.

**253.015 Shawano—Menominee county court.** (1) Menominee county shall not be organized separately for county court purposes, but shall be a part of a joint Shawano—Menominee county court, which constitutes a single judicial district. Such court shall have 2 divisions, the Shawano county division and the Menominee county division. No county judge for Menominee county shall be elected separately, but the duly elected judges of the Shawano—Menominee county court shall serve as county judges of the district. The books, papers and records of the office of such county judges shall be kept at the county seat of the county in which each has his principal office or, at the discretion of the county judges, at either or both county seats.

(2) The judge of Shawano—Menominee county court, branch one, may appoint a register in probate for each of the 2 divisions of the county court, or may appoint one register in probate to serve both divisions. If a separate register in probate is appointed for the Menominee county division, he may be the same person who is the duly elected clerk of circuit court for Menominee county. If one register in probate serves for both the Shawano and Menominee county divisions of the county court, the office of such register in probate shall be in the city of Shawano.

(3) The qualified electors of Menominee county shall be eligible to vote at every election for county judge.

(5) The county boards of Menominee county and Shawano county shall enter into an agreement prorating the joint expenditures involved in conducting the joint county court, and for such purposes the county board of Menominee county shall be authorized to appropriate, levy and collect a sum each year sufficient to pay its share of such expenses; but no portion of the initial cost, or amortization of debt on the Shawano county courthouse or repair, maintenance, or improvement of the same or items which are taxable costs between the parties shall be included as a joint expenditure for proration purposes. If the 2 county boards are unable to agree on prorating the joint expenditures involved, then the judge of the circuit court for the 10th circuit shall, under appropriate notice and hearing, determine the prorating of such expenditures, on the basis of the volume and character of work and responsibilities, to each county, under such procedure as he prescribes.

(6) The county judge may order court held at the county seat in Menominee county or at the county seat in Shawano county or other appropriate place, and the general terms of the court for the county court of Shawano county shall be the terms of Shawano—Menominee county court. The proper place of trial of civil and criminal actions commenced in such court shall be the place in either county where the judge orders court held.

(7) The jury commissioners of Shawano county shall serve as jury commissioners for the Shawano—Menominee county court, and shall add to the present Shawano county court jury list from which jurors shall be drawn the names of qualified residents of Menominee county, and the list shall be known as the Shawano—Menominee county court jury list.

(8) All fines and all costs and fees collected in Shawano—Menominee county court in causes of action arising out of Menominee county shall be accounted for and paid over quarterly to the county treasurer of Menominee county and in causes of action arising out of Shawano county shall be accounted for and paid over quarterly to the county treasurer of Shawano county.

(9) All process and pleadings and documents of the Shawano—Menominee county court shall be entitled, "Shawano—Menominee County Court: County Division", to be completed with the name of the appropriate county.

History: 1973 c 90.

See note to art. VII, sec. 2, citing *Pamanet v. State*, 49 W (2d) 501, 182 NW (2d) 459.

**253.02 Branches of county court.** (1) The following county courts have branches as follows:

(a) Two branches:

5. Columbia

8. Dodge

12. Eau Claire

20. Jefferson

23. La Crosse

29. Manitowoc

30. Marathon

35. Ozaukee

45. Sauk

49. Shawano—Menominee

55. Walworth

58. Washington

60. Waupaca

65. Wood

(b) Three branches:

10. Douglas

15. Fond du Lac

20. Kenosha

30. Outagamie

33. Sheboygan

45. Winnebago

(c) Four branches:

5. Brown

32. Rock

(d) Five branches:

30. Racine

35. Waukesha

(e) Six branches:

5. Dane

(m) Fourteen branches:

5. Milwaukee

(2) Each branch of the county court constitutes a court with all the powers and jurisdiction possessed by county courts having one judge only.

(6) (a) The cost of operation of such county court, except for the salaries of the judge and court reporter provided to be paid by the state, and except for the cost assumed by the state pursuant to s. 41.07 (3), and except as otherwise provided, shall be paid by the county.

(b) In counties having a population of 500,000 or more the county shall initially pay all of the operating costs of branches 3, 4 and 12 of the county court including that part of the cost of the clerk of circuit court's office attributable to the operation of such branches. After crediting the revenues received by the clerk as fees from actions brought in these branches, salaries of judges and state aids for court reporters, the balance of the costs or gain then remaining shall be shared annually by the city of the first class in such county and the county equally. This subsection shall not apply if the city of the first class has created and is operating a municipal justice court.

History: 1971 c 166; 1973 c 257

**253.05 Judges of county court; election.** A county judge shall be elected for each county with the following exceptions:

(1) Florence and Forest counties shall be combined into one district for the purpose of electing a county judge to serve and preside in both the county court of Florence county and the county court of Forest county.

(1m) Pepin and Buffalo counties shall be combined into one district for the purpose of electing a county judge to serve and preside in both the county court of Pepin county and the county court of Buffalo county.

(2) In counties having more than one branch of the county court, a judge shall be elected for each branch.

(3) No county judge shall be elected for Menominee county alone.

History: 1973 c 90.

**253.055 Age and other requirements for county judges.** No person who is 70 years of age or over or who is not licensed to practice law in this state may take office as a county judge.

**253.06 Term of office.** The term of office of every elected county judge is 6 years, and until his successor is elected and qualifies, which term commences with the first Monday in January next succeeding his election.

History: 1973 c 12.

**253.07 County judges' salaries.** (1) Every county judge shall receive from the state the salary specified for him in s. 20.923.

(a) In counties having a population of 500,000 or more, such salary shall be paid by the county and the state shall monthly reimburse the county one twenty-fourth of his salary specified in s. 20.923. In such counties, the state shall monthly reimburse the county for one-half of the employer contributions of the county judges who are members of the retirement system created by chapter 201, laws of 1937, as amended, to the extent of the salary specified in s. 20.923 for each county judge and for one-half of the employer social security contributions for such judges. The county auditor in such counties shall certify said amounts each month to the administrative director of courts who shall audit these charges and within 30 days certify the same for payment.

(b) In counties having a population of less than 500,000, the county for which each judge is elected shall reimburse the state for one-half of his annual salary specified in s. 20.923, and for one-half of the employer contributions paid on behalf of the judge. If 2 such counties share a single judge, each shall reimburse the state for one-half of the amount under this subsection. On October 1 of each year the department of administration shall certify to the secretary of state a statement of the amount due from each county under this section for the previous fiscal year. These amounts shall then be certified by the secretary of state to the respective counties and levied, collected and paid into the state treasury as a special charge, at the same time as the state taxes.

(2) The county may pay each county judge compensation in addition to that specified in s. 20.923, but such additional compensation shall be the same for each such judge.

(3) No judge shall receive any salary or fees from the state or any political subdivision thereof other than that specified in this section.

History: 1973 c 90.

**253.08 Expenses.** (1) **WHEN SERVING AWAY FROM SEAT OF HIS COURT.** A county judge shall be reimbursed by the county for his actual and necessary itemized expenses incurred in the discharge of judicial duty away from the permanent seat of his court but within the county for which he is elected.

(2) **JUDGE OF FOREST AND FLORENCE COUNTY COURTS.** The judge and court reporter for the Forest and Florence county courts shall be reimbursed, one-half by each county, for the actual and necessary expenses incurred by them in the discharge of their judicial and reportorial duties, respectively, away from the county seat of

the county of their residence but within the district specified in s. 253.05 (1).

(3) **WHEN SERVING IN ANOTHER COUNTY OR ATTENDING MEETINGS.** A county judge shall be reimbursed by the state, upon approval by the administrative director of courts, for his actual and necessary expenses incurred in the discharge of judicial duty in a county other than the one for which he is elected, and incurred when attending meetings of the boards of criminal court judges and county judges and of committees thereof.

(3m) **BUFFALO AND PEPIN COUNTY COURTS.** The judge and court reporter for the Pepin and Buffalo county courts shall be reimbursed, one-half by each county, for the actual and necessary expenses incurred by them in the discharge of their judicial and reportorial duties, respectively, away from the county seat of the county of their residence but within the district specified in s. 253.05 (1m).

(4) **OTHER DUTIES.** The county judge who is acting as chairman of the board of county judges shall be reimbursed by state, upon approval by the administrative director of courts, for his actual and necessary expenses, incurred in the performance of his duties as chairman and the county judge who is designated by the board of county judges to serve on the administrative committee under s. 257.15 shall be reimbursed by the state for his actual and necessary expenses, incurred in the performance of his duties on this committee.

History: 1971 c 254 s 19; 1973 c 90, 243.

**253.10 Probate jurisdiction.** (1) The jurisdiction of the county court extends to the probate of wills and granting letters testamentary and of administration on the estates of all persons deceased who at the time of their decease were domiciled in the county and of all persons deceased who at the time of their decease were not domiciled in this state but who had an estate within the county to be administered or probated, and to any other cases authorized by law; to the appointment of guardians to minors and others in the cases prescribed by law; to all matters relating to the settlement of the estates of such deceased persons and of such minors and others under guardianship; to all cases of constructions of wills admitted to probate in such court; and to all cases of trusts created by will admitted to probate in such court, including administration of trusts created in accordance with s. 701.09; and to hearing objections to the granting of licenses to marry, to ordering the refusal of such licenses and to the granting of stays upon the issuances thereof.

(2) (a) The county court shall have concurrent jurisdiction to hear, try and determine all matters and controversies which may

arise between any personal representative or guardian appointed by such court or trustee under any will admitted to probate in such court and any other person relating to title to or interest in real and personal property so far as such matter or controversy is incidental to and necessary for the complete administration of the estate, guardianship or trust, and regardless of who has possession of the property or in whose name it may be, to the same extent and with like effect as such matters and controversies may be heard, tried and determined in courts of general jurisdiction.

(b) The county court shall also have concurrent jurisdiction to hear and determine all proceedings involving any trust not subject to the jurisdiction of the county court under sub. (1), including a testamentary trust removed to this state from another state. The jurisdiction of the county court under this paragraph shall not continue beyond the determination of a proceeding, except where a court in another state requires continuing jurisdiction as a condition for permitting removal of a testamentary trust to this state. When a proceeding has been commenced in the circuit court, it may by order transfer the same and the record thereof to the county court for disposition, and the county court may in like manner transfer a proceeding to the circuit court.

(3) Subsection (2) shall not affect the provisions of chs. 859 and 880 relating to debts of or claims against decedents or persons under guardianship.

(4) The jurisdiction of the county court shall also extend to a determination of the heirs and next of kin of nonresident foreign deceased persons who at the time of their death had an interest in real or personal property within such county and the state.

(5) The jurisdiction of the county court shall also extend to the administration of estates of nonresident foreign deceased persons who at the time of their death had an interest in real or personal property within such county and the state. A claim against the state school fund under s. 863.39 (3) shall be deemed an interest in real or personal property.

(6) (a) For the purposes of subs. (4) and (5) the situs of intangible personal property found in this state belonging to nonresident foreign deceased persons shall be deemed to be within the state.

(b) All matters arising under subs. (4) and (5) shall be administered in accordance with the statutes, rules and procedure of the county court applicable to the estates of deceased residents of the state.

(c) All nonresident foreign persons referred to in subs. (4) and (5) who have not been heard from for 10 years shall be presumed to be dead.

(9) If a case be originally within the jurisdiction of the county courts of 2 or more counties the court which shall first take cognizance thereof by the commencement of proceedings shall retain the same throughout.

(10) The jurisdiction assumed by any county court in any case, so far as it depends on the place of residence of any person or the location of his estate, shall not be contested in any action or proceeding whatever except on an appeal from the county court in the original case or when the want of jurisdiction appears on the same record.

(11) In counties having a population of 500,000 or more, the probate jurisdiction, in addition to the foregoing, shall include matters under chs. 50, 51, 142 and 157 and ss. 46.10, 48.81 to 48.97, 52.01, 701.14, 880.31 and 880.61 to 880.71. The jurisdiction of matters under ch. 51 shall be concurrent with branches 3, 4 and 12 and with the family court under s. 252.017 (1).

History: 1971 c. 41 ss 11, 12.

Cross references: See 45.37 (10) (d) for administration of estates for Grand Army Home residents.

For additional provisions relating to probate jurisdiction see s. 856.01.

Where a widow and widower marry, each having a home, domicile is determined by intention, and physical acts are considered to express which residence is to be considered the permanent home as the domicile. Estate of Daniels, 53 W (2d) 611, 193 NW (2d) 847.

The county court has jurisdiction to determine equitable matters arising out of an alleged contract to make a will, such as specific performance, damages or other form of equitable relief. Estate of Schultz, 53 W (2d) 643, 193 NW (2d) 655.

The county court has jurisdiction of a petition for the removal of trustees and for an accounting, even though the facts alleged also assert that the trustees were guilty of mismanagement as officers and stockholders of a corporation, the stock of which constituted part of the assets of the trust. Estate of Becker, 56 W (2d) 356, 202 NW (2d) 681.

A county court in probate does not have jurisdiction to try an action against a former executor and others on a tort claim arising out of alleged negligence and fraud in the sale of stock which was part of the estate. Gerlach v. Thiem, 58 W (2d) 113, 205 NW (2d) 779.

**253.11 Civil jurisdiction.** (1) Except as otherwise provided in s. 252.017 for family court actions in counties having a population of 500,000 or more, the county court has jurisdiction of all actions to foreclose a land contract, mortgage or lien concurrent with the circuit court and of all other civil actions and special proceedings of all kinds concurrent with the circuit court except actions for the extraordinary remedies of certiorari, prohibition and quo warranto except that the county court has concurrent jurisdiction with the circuit court for actions for the remedy of certiorari for the limited purpose of reviewing a probation or parole revocation.

(2) The county court shall have jurisdiction over all actions for ordinance violations within

the county except violations of ordinances of towns, villages or cities which have established municipal justices, but ordinance violation cases shall be transferred from municipal justices to county court if the defendant follows the procedure of s. 300.055.

(3) The county court shall have the exclusive jurisdiction of garnishment actions where the amount involved is under \$500.

History: 1971 c. 70; 1973 c. 217

**253.12 Criminal trial jurisdiction.** The county court has jurisdiction of all criminal matters except treason, concurrent with the circuit court; except that in any county having a population of 500,000 or more the county court shall have jurisdiction to hear, try and determine all charges for misdemeanors arising within the county, and in addition thereto shall have jurisdiction to hear, try and determine all charges for felonies arising within the county, the punishment whereof does not exceed one year's imprisonment in the state prison or county jail, or a fine not exceeding \$1,000, or both.

**253.13 Jurisdiction of children and of adoptions.** (1) The county court, except in counties having a population of 500,000 or more, has exclusive jurisdiction of all proceedings under chs. 48 and 882.

(2) In counties having a population of 500,000 or more, jurisdiction of all proceedings under chs. 48 and 882 shall be determined under s. 252.017.

History: 1971 c. 211 s. 126

**253.135 Two counties; jurisdiction retained.** If a case is originally within the jurisdiction of the county courts of 2 or more counties the court which first takes cognizance thereof by commencement of proceedings shall retain the same throughout.

**253.14 May issue process.** The several county courts shall have power to issue all summonses, citations, subpoenas, executions, warrants and processes authorized by law which may be necessary to carry into effect any order, judgment or decree thereof, to compel the attendance of witnesses or to carry into execution the powers with which they are vested.

**253.142 Disqualification of judge by relationship or interest; procedure.** (1)

(a) Any person interested in any contested matter concerning the administration of estates may, either at the time of filing any petition or objection, notice of contest or other paper raising an issue, or at any other time up to and including the day set for hearing such matter, file a written

request for a substitution of a new judge. The written request shall specifically state the issue in the proceeding as to which the person requests the substitution of a new judge. The judge shall thereupon be disqualified to act in relation to that matter but after conclusion of the hearing he shall continue with the administration of the estate. No person shall be allowed to file such a written request with regard to more than one judge in any contested matter. If a person wishes to file a written request for the substitution of a new judge for the entire proceeding, s. 261.08 shall apply.

(b) The person who files such an affidavit of prejudice may be ordered by the court to immediately pay to the adverse party the fees of his witnesses in attendance on the hearing date and an attorney fee of \$10, unless the adverse party was notified in writing at least 5 days prior to the hearing that such affidavit had been or would be filed. Failure to make payment as ordered shall nullify the effect of the affidavit of prejudice. This paragraph does not apply in case an outside judge is presiding at the hearing of such matter unless the affiant has had 8 days' written notice that he was to preside.

(2) (a) In probate matters and in civil matters, except those tried under small claims procedure and other actions to recover forfeitures, ss. 261.085 to 261.11 apply, except that upon the disqualification of any county judge, the case shall be referred to the clerk or, in probate matters in counties having a population of 500,000 or more, the register in probate, who shall request assignment of another judge pursuant to s. 251.182 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to such assigned judge, by mail or in person, for signing or approving, wherever he may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the county court of the county where the records and files of the matter are kept.

(3) If said matter has been set for hearing the same shall stand continued until the judge so designated to act is ready to take it up for disposition. If the matter has not been set for hearing, the judge designated to act shall order a hearing thereon.

History: 1971 c. 46, 296.

**253.143 Clerks, etc., not to be appraisers.**

No clerk or other person employed in the office of any county judge shall be appointed commissioner or appraiser in any matter that is within the jurisdiction of such county judge or of the county court.

**253.145 Matters to circuit court if beyond county court jurisdiction.** If an action or special proceeding is brought in the county court which is not within the subject matter jurisdiction of that court, the action or special proceeding shall not be dismissed for lack of jurisdiction of the subject matter but shall be transferred by order of the county court to the circuit court of the same county. All process, pleadings and other papers and copies of all entries and minutes of the clerk shall be certified by him and filed with the circuit court.

History: 1971 c 40

**253.15 Seals.** The county board in each county shall furnish the county court of that county with appropriate seals as specified by the court. The court or, in multibranch courts the judges of the court by joint action, may, from time to time, alter the inscription and devices on the seal. The seal in use by the county court in each county on January 1, 1962, shall continue to be the seal of that court until changed.

**253.16 Where court to be held.** (1) Court shall be held regularly at the county seat.

(1m) In Fond du Lac county branch No. 3 is established. Such court shall sit at the county seat, at the city of Ripon, and at such other places in the county as the county board from time to time directs.

(2) In Rock county, branches No. 3 and 4 of the county court shall be established permanently at Beloit instead of at the county seat.

(2r) In Waukesha county, branch No. 2 of the county court shall be held in the city of Oconomowoc not less than one day in each week, but if the press of business in the Oconomowoc court warrants, the judge may hold court in said city not less than 2 days in each week.

(2w) In Winnebago county, a branch of the county court shall be held in a place in the city of Neenah or the city of Menasha not less than 2 days each week.

(3) Provision may be made, by court rule, for holding court in any city or village in the county other than the county seat where the court finds that there are adequate facilities provided and there is sufficient business to warrant holding court, except that jury trials may be held only at cities or villages where a branch of the court is established permanently by the legislature under sub. (2).

(4) When court is held in a city or village located partly in the county for which the judge was elected and partly in another, the judge may hold court for his county, except for trials of criminal offenses, anywhere in that city or village, the same as he could if it were entirely within the county for which he was elected.

**253.164 County court terms.** (1) Wherever any matter under s. 253.11 in the county court is related to a term of court, "term" shall be construed, for county courts, to mean the first Monday in April or the first Monday in October, whichever is more appropriate in context. Except as otherwise provided herein, a regular term of the county court shall be held on the first Tuesday of each month, except July and August.

(2) Special terms may be appointed by a general or special order entered in the minutes of the court; and when any order shall be made and notice given for the hearing of any matter at a term, such order shall be a sufficient appointment of a special term.

**253.165 When court to be held.** In case any matter appointed to be heard at a specified time is not heard at the time appointed, it stands continued and may be heard at any time, unless the court orders otherwise.

**253.17 Adoption of court rules.** (1) The county court can adopt or amend rules, under s. 253.16 or 253.18, only after a public hearing, notice of which has been given by publication as a class 2 notice, under ch. 985; the first insertion to be at least 3 weeks before the hearing. In multibranch courts, such rules shall be adopted or amended by a majority of the judges.

(2) A copy of all court rules or amendments thereto shall be filed with the clerk of circuit court and with the judicial council.

**253.18 Administration of work in multibranch courts.** In courts in which there are 2 or more branches, the judges may provide for the distribution of the work and assignment of cases among branches under the following rules:

(1) Branch No. 1 shall be designated as the probate branch. In addition, the judges may designate by court rule particular branches to handle primarily specific types of cases, such as juvenile matters, domestic relations, criminal matters, traffic or small claims.

(2) In counties having a population of 500,000 or more, branches 1 and 2 shall be the probate branches, branch 3 shall be the traffic court branch. Branch 4 shall be the misdemeanor court branch. Branch 12 shall be the traffic-misdemeanor court branch and shall in addition to all jurisdiction otherwise prescribed or conferred by ss. 253.11 (2) and 253.12 have such jurisdiction as set forth in s. 48.17. Branches 5, 6, 7, 8, 9, 10, 11, 13 and 14 shall be the civil court branches. The revenue from all actions for the violation of ordinances of a city of the 1st class, in any such county, brought in the county court shall be paid to the city monthly as provided in s. 288.10. Said city of the 1st class shall have access

to all books and records concerned with accounting of revenues and expenditures relating to this chapter.

(3) Regardless of the name given to a particular branch or the type of cases assigned to it, the judge of that branch shall handle other matters assigned to him as time permits.

(4) Whenever a branch is given a particular name by statute, all cases of the type described by the name of the branch shall be assigned initially to that branch by the clerk and shall be reassigned to another branch only in the case of disqualification, illness or vacation of the judge or congestion or vacancy in the branch named by statute.

History: 1971 c. 42; 1973 c. 257

**253.195 Retired judges, service.** Any person who has served 4 or more years as a county judge, and who was not defeated at the most recent time he sought reelection but is no longer a county judge, may serve temporarily on appointment by the chief justice of the supreme court or by any associate justice designated by the supreme court, acting through the administrative director of courts, as a judge of any circuit or county court. He shall receive from the state a per diem of \$80, until June 30, 1973, \$85 until June 30, 1974, and \$90 thereafter, for each day on which he actually serves and, while serving outside the county in which he resides, his actual and necessary expenses. This per diem compensation is not subject to s. 41.11 (12) but in no event shall the combined amount of this compensation and any other judicial compensation together with retirement annuities under the Wisconsin retirement fund, the Milwaukee county retirement fund and other state, county, municipal, or other Wisconsin governmental retirement fund, social security or other federal retirement funds received by him during any one calendar year exceed compensation paid by the state and the counties to any circuit judge. This compensation shall be paid from the appropriations provided in s. 20.625 (1).

History: 1971 c. 125, 211; 1973 c. 90

**253.26 Presumption in favor of orders.**

When the validity of any order or judgment of a county court in a proceeding under Title XLII-B, or to terminate a life estate or joint tenancy, in an inheritance tax proceeding, shall be drawn in question in another action or proceeding, everything necessary to have been done or proved to render the order or judgment valid, and which might have been proved by parol at the time of making the order or judgment and was not required to be recorded, shall, after 20 years from such time be presumed to have been done or

proved unless the contrary appears on the same record.

History: 1971 c. 41 s. 12; 1971 c. 211 s. 125

**253.30 Clerk of circuit court; duties, powers.**

(1) The clerk of circuit court shall keep the books and records under s. 59.39 and ch. 299 and perform the duties under s. 59.395 for all matters in the county court except those under ch. 48 and Title XLII-B. In counties having only one county judge, with the written approval of the circuit judge, the county judge may appoint the clerk of court register in probate. Such appointments shall be revocable at the pleasure of the county judge. Appointments and revocations shall be in writing and shall be filed in the office of the register in probate. When appointed for this purpose, the clerk shall have the powers and duties of registers in probate under ss. 253.32 and 253.33. In prosecutions of ordinance violations in the county court in counties having a population of 500,000 or more, the chief deputy clerk, criminal division, or one of his deputies, shall enter upon the records of the court a statement of the offense charged, which shall stand as the complaint, unless the court directs formal complaint be made. The defendant's plea shall be guilty or not guilty, and shall be entered as not guilty on failure to plead, which plea of not guilty shall put all matters in such case at issue, any other provisions of law notwithstanding.

(2) In counties with multibranch county courts, the clerk of circuit court may appoint one or more deputies for each branch except branch No. 1 and, in counties having a population of 500,000 or more, branch No. 2, which appointments shall be approved by the judge of the branch which the deputy will serve. A deputy appointed to serve a particular branch may serve any other branch of the county court.

(3) In counties having a population of 500,000 or more the clerk of the circuit court shall:

(a) Appoint, pursuant to ss. 63.01 to 63.16, a chief deputy clerk, criminal division for the exclusive handling of the clerk's work in all criminal and ordinance matters in circuit and county courts, provided that the clerk of the circuit court or such chief deputy clerk, criminal division shall sign all extradition requisition papers as required by law. The incumbent clerk of the municipal and district courts of such counties in office December 31, 1961, shall be appointed the first such chief deputy clerk, criminal division provided that he shall have served at least 2 consecutive years in such former capacity.

1. Said chief deputy clerk or one of his deputies shall be present at each session of the criminal branches of the circuit court and the

misdemeanor and traffic branches of the county court and shall perform all ministerial acts required of him by and under the direction of the judges of said courts, and when the misdemeanor and traffic branches of the county court are not in session, shall have power to take bail for the appearance of any person under arrest before said courts, subject to revision by said courts; he, or one of his deputies, shall issue all processes under his hand and the seal of the court and attest it in the name of the judge, signing it by his title of office, and shall tax costs; he, or one of his deputies, may issue warrants upon complaint filed in writing and upon oath in all cases. The complaints, warrants, recognizance, commitments, attachments, venire, subpoenas and all other writs and papers in said courts shall be in substance in the form provided by rules duly adopted and published by the county board of judges.

2. In prosecutions of ordinance violations in the county court, said clerk, or one of his deputies, shall enter upon the records of the court a statement of the offense charged, which shall stand as the complaint, unless the court directs formal complaint to be made; then the defendant's plea shall be guilty or not guilty, and shall be entered as not guilty on failure to plead, which plea of not guilty shall put all matters in such case at issue, any other provision of law notwithstanding.

3. Such clerk and his deputies and the police officers attending said criminal branches of the circuit court and misdemeanor and traffic branches of the county court and serving its process shall receive no fee.

(b) Appoint, pursuant to ss. 63.01 to 63.16, a chief deputy clerk county court, civil division for the exclusive handling of the clerk's work in all civil matters in county court excluding probate and juvenile matters. The incumbent clerk of the civil court of such counties on December 31, 1961, shall be appointed the first chief deputy clerk county court, civil division provided that he has served at least 2 consecutive years in such former capacity.

(c) Appoint, pursuant to ss. 63.01 to 63.16, a chief deputy clerk, children's court division, for the exclusive handling of the clerk's work in the children's court branch of such county court. The incumbent clerk of the children's court of such county on December 31, 1961, shall be appointed the first such chief deputy clerk, children's court division, provided that he has civil service status on such date in such former capacity.

(d) All other clerks and assistants in such courts having civil service status on January 1, 1962 shall automatically continue in such service in the county court and retain their civil service

status. The county board shall fix and pay the salaries of all such clerks and assistants.

(e) The clerk of the circuit court shall be deemed to be the department head of the clerk of courts department of the circuit and county courts of the county, except branches 1 and 2 of such county court, as to all personnel, procurement, budget and related matters.

(f) All clerks and assistants in the municipal and district courts having civil service status in a city of the first class in such county on the effective date of the abolition of such courts, shall automatically be transferred to county civil service in the county and circuit courts and retain their civil service status, including without limitation the right to go to the maximum step in the range of salaries as set forth in the city civil service salary ordinance as of July 1, 1961. Unless required by federal social security law, such city employes, upon entrance into county civil service, shall not be required to come under social security if they had determined while in city service that they did not elect to do so. Subject to the exception above stated, the county board shall fix and pay the salaries of all such clerks and assistants.

History: 1971 c. 41 s. 12; 1971 c. 211 s. 125

#### **253.31 Appointment and compensation of registers in probate.**

(1) In each county, the county judge, or in multibranch courts the judge of branch No. 1 shall appoint and may remove a register in probate, who, before entering upon his duties, shall take and subscribe the constitutional oath of office and file it, together with the order of appointment, in the office of the clerk of circuit court.

(2) One or more deputies may be appointed in like manner.

(3) The salary of the register in probate and of any deputies shall be fixed by the county board and paid by the county.

(4) In counties having a population of 500,000 or more, the appointment under subs. (1) and (2) shall be made by joint action of the judges of branches Nos. 1 and 2, but such judges shall not have the power to remove said register in probate and deputy registers, except through charges for dismissal made and sustained pursuant to s. 63.10.

#### **253.32 Duties of registers in probate.** The register in probate shall:

(1) File and keep all papers properly deposited with him unless required to transmit such papers.

(2) Keep a book called a court record and enter therein every proceeding in the court under Title XLII-B under its proper title, a brief statement of the nature of the proceeding and of



all papers filed therein, with the date of filing and a reference to the volume and page of the minute book where minute records can be found or to the microfilm file where papers have been recorded so that the court record is a complete index or brief history of each proceeding from beginning to final disposition.

(3) Keep a book called a minute book and enter therein a brief statement of all proceedings of the court under Title XLII-B during its sessions, all motions made and by whom, all orders granted in open court or otherwise, and the names of all witnesses sworn or examined. If this information is all included in the court record, the judge may direct that the minute book be no longer kept.

(4) Keep a record book or books and record therein in full all wills admitted to probate with the certificate of probate, all letters and all judgments rendered. The judge may require any other documents to be recorded therein. Any documents may be recorded on microfilm instead of in a record book. These records shall be kept irrespective of s. 59.715 (20) (c) unless recorded on microfilm.

(5) Keep an alphabetical index to the court record and the file containing the original documents or microfilm copies thereof.

(6) Perform any other administrative duties as the judge directs.

(7) Except in counties having a population of 500,000 or more, perform the duties of clerk of the juvenile court under ch. 48 unless these duties are performed by a person appointed under s. 48.04.

(8) When appointed deputy clerk pursuant to s. 253.344, perform such duties as the clerk of circuit court directs.

(9) In counties having a population of 500,000 or more, the register in probate shall be the department head as to all personnel, procurement, budget and related matters with reference to his office as register in probate of branches Nos. 1 and 2 of the county court. The register in probate shall appoint pursuant to ss. 63.01 to 63.16 as many deputy clerks as may be authorized by the county board for branch No. 1 and branch No. 2 of the county court, provided that such appointment shall be approved by the judge of the branch which such deputy shall serve. Such deputy clerks shall aid the register in probate and deputy registers in probate in the discharge of their duties.

History: 1971 c. 41 s. 12; 1971 c. 211 s. 125.

### 253.33 Powers of registers in probate. (1) The register in probate:

(a) May make orders for hearings when the judge is away from the county seat or unable to discharge his duties or when given authority in

writing by the judge and an application is made to the court in a proceeding under Title XLII-B requiring notice of hearing. The order and notice when signed "by the court, \_\_\_\_\_, register in probate" has the same effect as if signed by the judge.

(b) Has the same powers as clerks of court to certify copies of papers, records and judicial proceedings. Copies certified by registers in probate are receivable in evidence as if certified by clerks of court.

(c) Has the power to administer any oath required by law.

(d) Has, when appointed for this purpose, the powers of deputy clerks as provided in s. 59.38.

(e) Has, when appointed for this purpose, the powers and duties of court reporters and assistant reporters specified in s. 256.55.

(2) Subsection (1) applies to duly authorized deputy registers in probate.

History: 1971 c. 41 s. 12; 1971 c. 211 s. 125.

### 253.34 Fees in probate matters. (1) The register in probate shall collect the following fees:

(a) For filing a petition whereby any proceeding in estates of deceased persons is commenced, when the gross estate or value of the property is \$1,000 or less, no fee; when the gross estate is more than \$1,000 and less than \$10,000, a fee of \$3; when the gross estate is \$10,000 or more and less than \$25,000, a fee of \$6; when the gross estate is \$25,000 or more and less than \$50,000, a fee of \$25; when the gross estate is \$50,000 or more and less than \$75,000, a fee of \$50; when the gross estate is \$75,000 or more and less than \$100,000, a fee of \$75; when the gross estate is \$100,000 or more and less than \$200,000, a fee of \$100; and for each succeeding \$100,000 or fraction thereof, an additional fee of \$100. Such fees shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate in such proceedings, and shall apply to inventories filed in testamentary trusts and to the proceeds passing by virtue of revocable inter vivos trusts. The fees fixed in this paragraph shall also be paid in survivorship proceedings, and in such survivorship proceedings the value shall be based on the value of the property passing to the survivors.

(b) For a certificate terminating a life estate or homestead interest, \$3, but the fee shall not be collected if such termination is consolidated with probate or administration proceedings.

(c) For a certificate or judgment of descent of lands the same fees shall be charged and collected as are charged in estate proceedings in par. (a) based upon the valuation of the property passing by said certificate or judgment of descent.

(d) For filing objections to the probate of a will, \$10, except that this fee may be waived by the court when objection is filed by a guardian ad litem or attorney for a person in military service. The court may order a refund of said fee to the objector from the assets of the estate.

(e) For receiving a will for safekeeping, except under s. 856.05 (1), \$5.

(f) For each certificate issued by the registers in probate or county judges, 50 cents.

(g) For copies of records or other papers in the custody and charge of registers in probate at the rate of 50 cents a page; and for the comparison and attestation of such copies as are not provided by the registers, 50 cents for each page, but the minimum charge in each of the above mentioned instances is \$1, including the certificate.

(h) In counties having a population of 500,000 or more, for filing claims against estates, \$1, except that the state or the political subdivisions thereof and bureaus and boards of the state and its political subdivisions shall be exempt from the payment of this fee.

(2) For purposes of determining fees payable under sub. (1), the following shall apply:

(a) U.S. government bonds which by their terms are payable to another person upon death of the original registered owner are included in his gross estate and not subject to the fee for terminating a life estate.

(b) Life insurance, retirement benefits or annuities are excluded unless paid or payable to the estate or personal representative in which case they are included.

(c) When survivorship proceedings are pursued independent of probate or administration, a fee shall be collected for each, such fee not to be less than that payable if the proceedings were consolidated.

(d) Proceedings to administer assets subsequent to entry of final judgment in an estate are subject to fees as separate proceedings which fees shall not be less than those which would have been chargeable if such assets had been included in the original proceedings.

(e) The value of decedent's interest in real estate shall be diminished by the unpaid balance on duly recorded or filed liens and mortgages.

(f) Special administrations are subject to filing fees, such fees to be credited upon fees for subsequent general administration or probate.

(3) The register in probate shall, on the first Monday of each month, pay into the office of the county treasurer all fees collected by him and in his hands and still unclaimed as of said day. Each county treasurer of a county having a population under 500,000 shall make a report under oath to the state treasurer on or before the fifth day of January, April, July and October of all fees

received by him under sub. (1) (a) to (e) up to the first day of each of said months and shall at the same time pay 65 per cent of such fees to the state treasurer for deposit in the general fund. Each county treasurer shall retain the balance of fees received by him under this section for the use of the county. In counties having a population of 500,000 or more all fees paid under this section shall be kept for use by the county.

A proceeding in county court to determine the inheritance tax on the interest passing to survivors in an inter vivos trust where the settlor decedent had retained full power of revocation is a proceeding in the estate of a deceased person and the register in probate is required to collect a filing fee based on the value that passes to survivors. 58 Atty. Gen. 12.

**253.344 Register in probate may be appointed deputy clerk.** With the written approval of the county judge or, in multibranch county courts, of the judge of branch No. 1 of the county court, and of the judge or judges of the circuit court, the clerk of circuit court may appoint the register in probate a deputy clerk. Appointments by the clerk under this section shall be revocable by him at pleasure. Such appointments and revocations shall be in writing and shall be filed in the clerk's office.

**253.345 County court reporters as registers in probate.** County court reporters may be appointed registers in probate or deputy registers by the county judge, except that in multibranch county courts the appointment shall be by the judge of branch No. 1 of the county court, with the consent of the judge of the branch in which the reporter serves. Appointments by the county judge under this section shall be revocable by him at pleasure. Appointments and revocations shall be in writing and shall be filed in the office of the register in probate.

**253.35 Appointment of reporter and assistants.** (1) (a) Every county judge may appoint a competent phonographic reporter and as many assistant reporters as necessary, and may remove them at pleasure, provided that in counties having a population of 500,000 or more, appointments and removals shall be pursuant to ss. 63.01 to 63.17. The register in probate or deputy register may be appointed such reporter or assistant reporter.

(b) In counties having a population of 500,000 or more the judges of branches 1, 2 and 4 of the county court may each appoint 2 reporters and the 2nd reporter for branch 4 shall be shared with branch 12 of said court, but the division of work of such reporters shall be under the direction and supervision of the judge of branch 4. In counties having a population of 50,000 or

**253.35 COUNTY COURTS**

3290

more, in which the county court is a single branch court, the county judge may appoint 2 reporters.

(2) County court reporters when appointed pursuant to s. 253.345 shall have the powers and duties of registers in probate or deputy registers, as the case may be, and, when appointed pursuant to s. 253.36, shall have the powers and duties of deputy clerks.

(3) In counties having a population of less than 500,000, every reporter appointed under sub. (1) shall receive from the state the salary specified for him in s. 20.923 (7). The county for which each reporter is appointed shall monthly reimburse the state for one twenty-fourth of his salary as described in s. 20.923 (7) and one twenty-fourth of the annual employer contributions paid on behalf of the county court reporters under s. 41.07 (3). The county may pay an equal amount to each county court reporter in addition to that specified in s. 20.923 (7). If 2 counties share a single reporter, each shall reimburse the state for one-half of the amount under this subsection. Compensation paid to any assistant reporter appointed under sub. (1) shall be paid by the county.

(4) In counties having a population of 500,000 or more every reporter appointed under sub. (1) shall receive the salary specified for him by s. 20.923 (7), directly from the county. The state shall monthly reimburse the county for one twenty-fourth of his salary specified in s. 20.923 (7), for one-half of the employer contributions of each reporter who is a member of the retirement system under chapter 201, laws of 1937, to the extent of such salary and for one-half of the employer social security contributions for the reporter. The county may pay each county court reporter compensation in addition to that specified in s. 20.923 (7), but such additional compensation shall be the same for each such reporter. All reporters of the district, civil, county and children's court of such county who have civil service status in such county on December 31, 1961, shall retain such status as reporter in the county court. Such reporters who are members of the county employes' retirement system on said date shall remain as members subject to all provisions of the retirement system law included in chapter 201, laws of 1937, as amended, and all such reporters thereafter appointed shall likewise be members of said system. In no event shall any of the aforesaid reporters be considered members of the Wisconsin retirement system.

(5) Every reporter appointed under sub. (1) shall furnish to any party a transcript of the testimony taken by him in any matter or proceeding in the manner and for the fees provided in s. 256.57.

(6) The provisions of s. 253.08 shall apply with respect to expenses of a county court reporter and assistant reporter.

History: 1971 c. 40 s. 93; 1973 c. 90; 1973 c. 243 s. 82

**253.36 County court reporters as deputy clerks.** A county court reporter or assistant reporter may be appointed a deputy clerk by the clerk of circuit court with the written approval of the county judge of the branch in which he serves, and of the judge or judges of the circuit court. Appointments by the clerk under this section shall be revocable by him at pleasure. Appointments and revocations shall be in writing and shall be filed in the clerk's office.

**253.40 Office and records to be kept at county seat.** Except in branches Nos. 3 and 4 of the Rock county court, every county judge in this state shall maintain in his office the books, papers and records of the county court at the county seat of the county in which he holds his office, which office and the books, papers and records thereof shall at all reasonable times be open to access and inspection by any person having any business therewith except as otherwise provided by law. Originals of judgments or orders made pursuant to county court jurisdiction, of branches Nos. 3 and 4 of the Rock county court in Beloit, shall be kept at the county seat.

**253.41 Probate court commissioner.** In counties having a population of 500,000 or more, there is created in the classified civil service the office of probate court commissioner who shall be appointed from the membership of the bar residing in such county by the county judges of branch 1 and of branch 2, pursuant to ss. 63.01 to 63.17.

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

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

(2) (a) The judges of branches 1 and 2 may assign to the probate court commissioners any matters under s. 253.10 and any matters over which the judges may have jurisdiction, and the probate court commissioners shall have the power to determine such matters and to sign any order or certificate required in such determination.

(b) The probate court commissioners may administer oaths, take depositions and testimony, and certify and report said depositions

and testimony, take and certify acknowledgments, allow accounts, and fix the amount and approve the sufficiency of bonds.

**(3)** The probate court commissioners shall receive such salary as is fixed by the county board, shall perform their duties under the direction of the judges of branches 1 and 2, and shall be furnished with quarters, necessary office furnishings and supplies as determined by the county board.

**(4)** The register in probate of such county shall also have the duties and powers of a probate

court commissioner and shall act in such capacity when designated to do so by either judge.

**(5)** All persons now [1969] acting as deputy registers in probate under civil service shall be appointed as probate court commissioners and shall be deemed regularly appointed thereto under this section and be subject to all provisions of the civil service laws, ordinances and rules and regulations applicable in the county.