CHAPTER 256

GENERAL PROVISIONS CONCERNING COURTS OF RECORD, JUDGES, ATTORNEYS AND CLERKS

256.01 Powers of courts. The several courts of record of this state shall have power:

(1) To issue process of subpoena, requiring the attendance of any witness, residing or being in any part of this state, to testify in any matter or cause pending or triable in such courts.

(2) To administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of such court.

(3) To devise and make such writs and proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.

256.02 Justices and judges and municipal justices; oath of office; ineligibility to other office; salary; conservators of peace. (1) Every person elected or appointed justice of the supreme court, or judge of the circuit or county court, or municipal justice, shall take, subscribe, and file the following oath:

STATE OF WISCONSIN,
County of .....

I, the undersigned, who have been elected (or appointed) to the office of ....., but have not yet entered upon the duties thereof, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Wisconsin; that I will administer justice without respect to persons and will faithfully and impartially discharge the duties of said office to the best of my ability. So help me God.

.....(Signature)

Subscribed and sworn to before me this ..... day of ....., 19....

.....(Signature)

(2) The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he was elected, or appointed.

(3) The judges of such courts shall be conservators of the peace, and have power to administer oaths and take the acknowledgments

of deeds and other written instruments throughout the state.

(4) The county board is prohibited from reducing the salary or additional salary of a county or circuit judge for the term for which elected.

The county board was without authority to adopt a resolution providing for the reduction and termination of its supplement to county judges' salaries on the contingency of increases in state salaries, since the resolution allowed for a mid-term reduction in compensation and constituted an unsanctioned interference with the legislature's authority to fix and increase county salaries. State ex rel. Conway v. Elvod, 70 W (2d) 448, 234 NW (2d) 354.

256.025 Judge to file affidavit as to work done to receive salary. (1) No judge of a court of record shall receive or be allowed to draw any salary, unless he first executes an affidavit stating that no cause or matter which has been submitted in final form to his court remains undecided that has been submitted for decision for 90 days, exclusive of the time that he has been actually disabled by sickness or unless extended by him under sub. (2). The affidavit shall be presented to and filed with every official who certifies in whole or in part, the judge's salary.

(2) If a judge is unable to complete a decision within the 90-day period specified in sub. (1), he shall so certify in the record and the period is thereupon extended for one additional period of not to exceed 90 days.

256.03 What acts may be punished as criminal contempts. Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts and no other:

(1) Any breach of the peace, noise, disturbance or other disorderly or insolent behavior committed in its immediate view and presence, in court or chambers, which directly tends to interrupt its proceedings or to impair the respect due its authority.

(2) Wilful and intentional disobedience or obstruction of, or resistance to any process or order lawfully issued or made by it.

(3) Wilful refusal to be sworn as a witness or, when so sworn, the wilful refusal to answer any legal or proper question when the refusal is not legally justified.

(4) Wilful, intentional and contumacious misconduct on the basis of which the court could make a finding of civil contempt under s. 295.01, which challenges and impugns the authority of the court.

History: 1975 c. 401.

Cross Reference: See 885.11 and 885.12 for provisions relating to punishment of disobedient witnesses.

An order for a pretrial conference issued and signed by the clerk of court cannot serve as a basis for a contempt judgment. State v. Dickson, 53 W (2d) 532, 193 NW (2d) 17.

Contempt of court: some consideration for reform. 1975 WLR 1117.

256.04 Procedure in criminal contempts. (1) SUMMARY PROCEDURE. (a) A criminal contempt may be punished summarily if the judge certifies on the record that the judge has seen or heard the conduct constituting the contempt and that it was committed in the immediate view and presence of the court.

(b) If, in the situation described in par. (a), the court has become personally embroiled with the alleged contemnor or has been attacked in such a way that the personal feelings of the judge could reasonably be expected to have been affected, or has adopted an adversary posture with regard to the alleged contemnor, the court may then employ the summary contempt procedure only immediately after the allegedly contemptuous behavior has taken place, if necessary to preserve the order of the court and protect the authority of the court.

(2) NONSUMMARY PROCEDURE. (a) In all contempt situations other than those described in sub. (1), there shall be a nonsummary procedure conducted by a different judge, unless the defendant consents to the same judge.

(b) A nonsummary criminal contempt shall be prosecuted on notice. Such proceeding shall be prosecuted by the district attorney, the attorney general or an attorney specially appointed by the court for that purpose. On a verified petition setting forth the essential facts constituting the criminal contempt charged and described as such, on information and belief, the court may take jurisdiction of the special proceeding of criminal contempt and issue the necessary process of order to show cause or warrant for arrest. The defendant is entitled to a reasonable time for the preparation of the defense, right to bail, substitution of judge, and is presumed innocent until proven guilty beyond a reasonable doubt to the satisfaction of all jurors. Upon a verdict or finding of guilty the court shall sign and enter of record an order reciting the facts and fixing the punishment.

History: 1975 c. 401, 421.

256.05 Pardon for criminal contempt. Upon receiving proper application under ss. 57.08 to 57.10, the governor may pardon any person convicted of a criminal contempt.

History: 1975 c. 401.

256.06 Punishment for criminal contempt. Punishment for criminal contempt under this chapter may be by fine or imprisonment in the jail of the county where the court is sitting, or both, but in no case may exceed the following:

(1) For each offense adjudicated under the summary procedures of s. 256.04 (1), a fine of not more than $500 or imprisonment for not more than 30 days or both. When any person is

committed to jail for the nonpayment of any fine under this subsection, the person shall be discharged at the end of 30 days.

(2) For each offense adjudicated under the nonsummary procedures of s. 256.04 (2) for past acts, a fine of not more than $5,000 or imprisonment for a period not to exceed one year, or both; and to enforce any continuing order of the court for future acts, a fine of not more than $1,000 for each day of violation, subject to purge by the defendant's timely compliance with the future acts required under such continuing order.

(3) Fines collected under this section may not be applied for the benefit of any party in a civil proceeding.

History: 1975 c. 401, 421.

256.07 Criminal prosecution for contempt. Persons found in contempt under s. 256.03 shall be liable to complaint, indictment or information for any offense committed by the same act which was found to be a criminal contempt. The court before which a conviction may be had on such complaint, indictment or information shall, in sentencing, take into account the punishment inflicted under s. 256.06.

History: 1975 c. 401.

256.08 Vacancy in judgeship not to affect suits. No process, proceeding or action, civil or criminal, before any court of record shall be discontinued by the occurrence of any vacancy in the office of any judge or of all the judges of such court, nor by the election of any new judge or judges of any such court, but the persons so elected shall have power to continue, hear and determine such process, proceedings or action as their predecessors might have done if no new election had been held.

256.09 Failure to hold term not to affect suits. No process issued or action or proceeding in any court of record shall be discontinued by reason of such court not having been held at any stated term thereof or by reason of any term of such court having been altered; but such process shall be deemed returnable at the term which shall be held next after such failure or at the term established by such alteration, and such action or proceeding shall be continued to such next term or to the term established by such alteration, as the case may be.

256.10 Nor neglect to adjourn. No omission to adjourn any such court from day to day, previous to the final adjournment thereof without day, shall vitiate any proceedings in such court; and the adjournment of any court before the expiration of its term shall not affect the return or service of any writ issued prior or subsequent to such adjournment.

256.12 Adjournment to another place. Whenever it shall be deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity, to hold any court at the time and place appointed therefor the justices or judges of the court may appoint any other place within the same county and any other time for holding the same; and the said adjourned session shall be taken as part and continuance of said term, and all proceedings in the said court may be continued at said adjourned times and places and be of the same force and effect as if said court had continued its sessions at the place it was holden before such adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the same, and shall be published as a class 1 notice, under ch. 985, or in such other manner as is required in the order.

256.13 Continuances; legislative privilege. When a party or an attorney for any party to any action or proceeding in any court or any commission, is a member of the Wisconsin legislature or is president of the senate, in session, such fact shall be sufficient cause for the adjournment or continuance of such action or proceeding, and such adjournment or continuance shall be granted without the imposition of terms.

256.14 Sittings, public. The sittings of every court shall be public and every citizen may freely attend the same, except when otherwise expressly provided by law on the examination of persons charged with crime; provided, that when in any court a cause of a scandalous or obscene nature is on trial the presiding judge or justice may, in his discretion, exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses.

Any citizen has the right to attend immunity hearings arising out of a John Doe proceeding. State ex rel. Newspapers, Inc. v Circuit Court, 65 W (2d) 66, 221 NW (2d) 894.

256.15 Holding court, effect of holidays. (1) No court shall be opened or transact business on the first day of the week, the 4th day of July or Christmas unless it is for the purpose of instructing or discharging a jury or of receiving a verdict and rendering a judgment thereon. This section shall not prevent the exercise of the jurisdiction of any judge when it is necessary, in criminal cases, to preserve the peace or arrest offenders. If the day fixed by law for beginning any term of any court of record falls upon a legal holiday, the term shall be deemed opened and

adjourned until the next day which is not a Saturday, Sunday or holiday, and from day to day thereafter until the judge is present, and all matters returnable on that day shall be held continued until the judge is present; but whenever any such holiday, other than the 4th of July or Christmas, shall occur during the term of any court of record, said court may, in its discretion, proceed with its business thereon in like manner and with like effect as upon any other day.

(2) Notwithstanding sub. (1), a court shall not commence or conduct the trial of any action to a jury on the day on which any primary or general election is held.

History: 1975 c. 159.

A court has no jurisdiction to try a case on a holiday but the error can be waived by the parties. State v. Wimberly, 55 W (2d) 437, 198 NW (2d) 360.

256.16 Memorial day; veterans to be given leave of absence on. (1) The head of every department of the state government and of every court of the state, every superintendent or foreman on the public works of the state, every county officer, and the head of every department or office in any town, village, city, or other political subdivision, shall give a leave of absence with pay for 24 hours on the last Monday in May of each year, which shall be the day of celebration for May 30, to every person in the employ of the state or any county, town, village or city therein, who has at any time served in and been honorably discharged from the army, navy or marine corps of the United States. A refusal to give such leave of absence to one entitled thereto, shall constitute neglect of duty.

(2) In all cities, however organized, where the nature of the duties of the several departments of government of such cities is such as to necessitate the employment of members of such departments on Memorial day, the head of each such department shall arrange and assign such necessary work in such a manner as to permit the largest possible numbers of employes of such department to be off duty either the whole or part of Memorial day.

History: 1971 c. 226.

256.17 Legal holidays. January 1, the 3rd Monday in February (which shall be the day of celebration for February 12 and 22), the last Monday in May (which shall be the day of celebration for May 30), July 4, the 1st Monday in September which shall be known as Labor day, the 2nd Monday in October, November 11, the 4th Thursday in November (which shall be the day of celebration for Thanksgiving), December 25, the day of holding the September primary election, and the day of holding the general election in November are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every city of the 1st class the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 500,000 or more the county board may by ordinance provide that all county employes shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employes whose duties require that they work on such days be given equivalent time off on other days. Whenever any of said days falls on Sunday, the succeeding Monday shall be the legal holiday.

History: 1971 c. 226; 1973 c. 140, 333.

256.171 Wisconsin family month. The month of November, in which the celebration of Thanksgiving occurs, is designated as Wisconsin Family Month and the first Sunday of that month as Family Sunday. In conjunction therewith appropriate observances, ceremonies, exercises and activities may be held under state auspices to focus attention on the principles of family responsibility to spouses, children and parents, as well as on the importance of the stability of marriage and the home for our future well-being; and the chief officials of local governments and the people of the state are invited either to join and participate therein or to conduct like observances in their respective localities.

History: 1973 c. 333.

256.175 Indian Rights Day. July 4 is designated as "Indian Rights Day," and in conjunction with the celebration of Independence Day, appropriate exercises or celebrations may be held in commemoration of the granting by congress of home rule and a bill of rights to the American Indians. When July 4 falls on Sunday, exercises or celebrations of Indian Rights Day may be held on either the third or the fifth.

256.18 Process, etc., to be in English. All writs, process, proceedings and records in any court within this state shall be in the English language, except that the proper and known names of process and technical words may be expressed in the language heretofore and now commonly used, and shall be made out on paper or parchment in a fair, legible character, in words at length and not abbreviated; but such abbreviations as are now commonly used in the English language may be used and numbers may

be expressed by Arabic figures or Roman numerals in the usual manner.

256.19 Judges disqualified, when. In case any judge of any court of record shall be interested in any action or proceeding in such court or shall have acted as attorney or counsel for either of the parties thereto such judge shall not have power to hear and determine such action or proceeding or to make any order therein, except with the consent of the parties thereto.

Judges are disqualified only where they have acted as counsel for a party in the matter to be heard or determined. Sturdevant v. State, 49 W (2d) 142, 181 NW (2d) 523.

Where a judge represented the defendant as counsel in another phase of a criminal matter, he had no power to act as judge in hearing the related postconviction motion and should have, sua sponte, disqualified himself. Rainey v. State, 65 W (2d) 374, 222 NW (2d) 620.

256.20 Judge not to review case on appeal. No judge of an appellate court or of any court to which a writ of certiorari or of error shall be returnable shall decide or take part in the decision of any cause or matter which shall have been determined by him, while sitting as a judge of any other court, unless there shall not be a quorum without him.

256.21 Judge not to have partner or be interested in costs; judge to disqualify himself for kinship. No judge shall have a partner practicing in the court of which he is a judge; nor shall any judge be directly or indirectly interested in the costs of any action that is brought in the court of which he is a judge except in those actions in which he is a party or is interested. Whenever the judge of any court is related within the third degree of kinship to any litigant or to any attorney or agent or his spouse appearing for one of the litigants in any matter, he shall disqualify himself from acting in such matter and a qualified judge shall be called in such manner as provided by statute upon the filing of an affidavit of prejudice.

256.22 Judge not to act as attorney, etc.; attorneys not to have office with judge. (1) No judge, while holding such office, shall be in any manner engaged or act as attorney or counsel; and no judge or his clerk or any person employed by him in or about his office, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any matter or action pending before such judge or officer, or which he has reason to believe will be brought before him for decision, or draft or prepare any papers, including wills, or other proceedings relating to any such matter or action except when expressly authorized by law; and no court commissioner or other judicial officer shall be allowed to demand or receive any fees or compensation for services as such commissioner or judicial officer, except those expressly authorized by law, upon penalty, for any violation hereof, of removal from office.

(2) No practicing attorney shall hold his office in the office of the clerk of any court in which he practices nor shall he hold his office in the same room with a judge.

(3) No practicing attorney shall have his office in the same room with any district attorney, municipal justice or court commissioner, unless he is a partner of such district attorney, municipal justice or court commissioner, in which case he shall not practice as an attorney before such municipal justice or court commissioner nor act as attorney in any case in which it is the duty of such district attorney to appear or prosecute for the state; except that the law partner of any district attorney may, at the request of the district attorney, without fee or compensation therefor, assist the district attorney in the prosecution of any case on the part of the state.

(4) No law partner of any district attorney shall act as a municipal justice or court commissioner in any case in which the state may be a party or defend in any court any person charged with any offense, or appear in any civil action against the state in which it is the duty of such district attorney to prosecute or appear for the state.

(5) Any attorney who violates sub. (2), (3) or (4), and any municipal justice or court commissioner who violates or knowingly permits any such violation, may be fined not to exceed $100 for each such offense.

See note to 865.065, citing 63 Atty. Gen. 55.

256.23 Court commissioner, when disqualified. A court commissioner, or any judge acting as such, shall not act or take part in the decision of, or make any order in any matter or proceeding in which he is a party, or in which his rights would be in any manner affected by his decision or order thereon, or in which he is interested, or in which his law partner, or any person connected with him as employer, employe, or clerk, or in the law business in any manner, shall be interested or appear as a party, agent, attorney or counsel. Any court commissioner, or judge, acting as such, violating this section shall forfeit twenty-five dollars for each such violation, and shall also be subject to removal from office.

256.24 Liability of judicial officers. The judges of the circuit and county courts and court commissioners shall be held personally liable to any party injured for any wilful violation of the

law in granting injunctions and appointing receivers, or for refusing to hear motions to dissolve injunctions and to discharge receivers; provided, such motions are made in accordance with the rules of law or such rules as are promulgated by the supreme court.

256.25 Money in court, how deposited. The judge of any court of record on the application of a party to any action or proceeding therein who has paid into court the sum of one thousand dollars or more in such action or proceeding may order such money to be deposited in a safe depository until the further order of the court or judge thereof. After such money has been so deposited it shall be withdrawn only upon a check signed by the clerk of the court pursuant to whose order the deposit was made and upon an order made by such court or the judge thereof.

256.26 Court officers, liability of to arrest. The officers of the several courts of record shall be liable to arrest and may be held to bail in the same manner as other persons, except during the actual sitting of any court of which they are officers; and when sued with any other person such officers shall be liable to arrest and may be held to bail as other persons during the sitting of the court of which they are officers; but no attorney or counselor shall be exempt from arrest during the sitting of a court of which he is an officer unless he shall be employed in some case pending and then to be heard in such court.

256.27 Appearance by attorney. (1) AUTHORIZED. Every person of full age and sound mind may appear by attorney in every action or proceeding by or against him in any court except felony actions, or may, at his election, prosecute or defend the same in person.

(2) SERVICE OF NOTICE. Upon the service of notice of appearance or retainer generally, by an attorney for any party, any other party may file such notice and have the appearance of such party entered as of the time when such notice was served.

(3) SUBSTITUTION OF ATTORNEYS. No order for the substitution of an attorney for a party shall be made without consent signed by such party and his attorney; or for cause shown and upon such terms as shall be just, and on such notice as the court or judge shall direct.

Substitution of counsel may be denied where it will unduly interfere with the administration of justice. Lorscheter v. Lorscheter, 52 W (2d) 804, 191 NW (2d) 200

256.28 Attorneys; admission to practice. No person shall be admitted or licensed to practice law in this state, including appearing before any court, except in the following manner:

(1) ADMISSION ON LAW DIPLOMA, LIST OF LAW SCHOOLS. (a) Every person 21 years of age or over and of good moral character who is a citizen of the United States, a resident of this state and a graduate of a law school in this state which law school at the time of his graduation was approved by the American bar association, as shown by the record of the clerk of the supreme court, and who has met the requirements of sub. (1) (b) shall be admitted to practice law in this state by the supreme court and, when such court is not in session, by one of the justices thereof, by an order signed by such justice and filed with the clerk of said court.

(b) To be admitted on the diploma privilege, every applicant must present to the clerk of the supreme court his diploma and a certificate of the law school at which he completed his formal law studies, showing the courses completed and the semester credits earned and stating that according to the official academic records of such school the applicant has satisfactorily completed at least the minimum of legal studies required for the first degree in law and the total semester hours were not less than 84; and such studies included not less than 60 semester hours of accredited study, satisfactorily completed in regular courses having as their primary and direct subject matters the study of rules and principles of substantive and procedural law as they may arise in the courts and administrative agencies of the United States and this state in the areas generally known as: administrative law, appellate practice and procedure, commercial transactions, conflict of laws, constitutional law, contracts, corporations, creditors' rights, criminal law and procedure, damages, domestic relations, equity, evidence, future interests, insurance, jurisdiction of courts, labor law, legislation, ethics and legal responsibility of the profession, partnership, personal property, pleading and practice, public utilities, quasi-contracts, real property, taxation, torts, trade regulation, trusts, and wills and estates. There shall be included in such minimum not less than 30 semester hours covering the following subject matters: constitutional law, contracts, criminal law and procedure, evidence, jurisdiction of courts, ethics and legal responsibilities of the legal profession, pleading and practice, real property, torts, wills and estates. These requirements may be satisfied by combinations of the curricular courses, and the dean of each law school in Wisconsin shall file with the clerk of the supreme court upon its request a certified statement setting forth the courses taught in his law school which are accredited for a first degree in law and the percentage of the time devoted in each course to the subject matter of the areas of law required by this rule for eligibility to

admission on the diploma privilege. In addition to these requirements a law school may require other courses or practical training, for which credit toward a degree may or may not be given, as a prerequisite to its certification of eligibility for admission on the diploma privilege.

(c) The clerk of the supreme court shall compile a record of all law schools, which are approved by the American bar association, with the date of such approval and those which are not approved; and such record so compiled shall constitute an official record of the supreme court, and proof of the fact that the law schools therein stated as approved by the American bar association were so approved at the times therein stated.

(2) ADMISSION ON CERTIFICATE OF BAR COMMISSIONERS. Every person 21 years of age or over and of good moral character who is a citizen of the United States and a resident of this state and a graduate of any law school which at the time of his graduation was approved by the American bar association shown by the record of the clerk of the supreme court, shall, upon the production of the certificate of the board of state bar commissioners, be admitted to practice law in this state by the supreme court, and when such court is not in session, by one of the justices, by an order signed by such justice and filed with the clerk of said court. A certificate shall be given by the board of state bar commissioners to every person who successfully passes an examination given by the board of state bar commissioners covering all or part of the subject matter in the areas of law listed in sub. (1) (b).

(3) ADMISSION ON PROOF OF PRACTICE ELSEWHERE. Every person 21 years of age or over and of good moral character who is a citizen of the United States and a resident of this state and who shall have been admitted to practice law in any other state or states or territory, or the District of Columbia, may be admitted to practice law in this state by the supreme court upon motion, or, when the court is not in session, by one of the justices thereof, after filing with the clerk of the supreme court (1) his written application therefor, (2) a certificate of his admission to practice law by a court of last resort in such other state or territory or the District of Columbia and (3) satisfactory proof that he is a citizen of the United States and a resident of this state, is of good moral character, and has been engaged in actual practice in such other state or states or territory or the District of Columbia or in the courts of the United States for 5 years within the last 8 years prior to filing his application, exclusive in each case of time spent in the armed forces. The certificate of the judge of any court of record in such other state or territory or the District of Columbia or court of the United States, before whom such applicant has practiced, under the seal of such court, may be deemed sufficient proof of such practice in such state or territory or the District of Columbia or court of the United States.

(4) SERVICE COUNTED AS PRACTICE OF LAW. Service as judge of a court of record of any state or territory or the District of Columbia or of the United States, service in any department of the United States government including service in the armed forces determined by the supreme court to be actual legal service, and teaching in any law school which is approved by the American bar association, may be deemed to be actual practice of law for the purpose of sub. (3), and such law teaching or such legal service performed in this state as well as in such other state or states or territory or District of Columbia will be counted under the 5 and 8 years' tests provided in sub. (3).

History: Sup. Ct. Order, 48 W (2d) vii; Sup. Ct. Order, 50 W (2d) xxiii; Sup. Ct. Order, 59 W (2d) vii.

Note: Section 4 of Rule 2 of the State Bar Rules as adopted by the Supreme Court provides:

Section 4. Only active members may practice law. No individual other than an enrolled active member of the State Bar shall practice law in this state or in any manner hold himself out as authorized or qualified to practice law. A judge in this state may allow a nonresident counsel to appear in his court and participate in a particular action or proceeding in association with an active member of the State Bar of Wisconsin who appears and participates in such action or proceeding. Permission to such nonresident lawyer can be withdrawn by the judge granting it if such a lawyer by his conduct manifests incompetency to represent a client in a Wisconsin court or his unwillingness to abide by the Code of Professional Responsibility and the Rules of Decorum of the court.

Admission upon diploma to the Wisconsin bar. 58 MLR 109.

Bar examinations; good moral character and political inquiry 1970 WLR 471.

256.281 Board of state bar commissioners. (1) COMPOSITION. The board of state bar commissioners shall consist of 9 members having terms of 7 years expiring the 2nd Tuesday of August. Two members of the board shall be non-lawyers appointed by the supreme court. Except for the 2 non-lawyer members, the supreme court shall appoint the members so that no 2 terms shall expire in the same year. Four members of the board shall constitute a quorum, for the transaction of business. The non-lawyer members of the board shall participate in all board functions except the conduct and grading of bar examinations. Motions and resolutions may be adopted by a majority vote of the members present, providing a quorum is present. The clerk of the supreme court shall be secretary of the board but shall not be a member thereof.

(2) DUTIES. The board is charged with the examination of applicants for admission to the bar under s. 256.28 (2) and with investigation and prosecution of complaints against attorneys

and such other duties as may be assigned to it by the supreme court.

(3) COUNSEL FOR BOARD. The supreme court as occasion may require shall appoint a competent attorney or attorneys who are members of the bar to act as counsel for the state bar commissioners or for the parties making a complaint under s. 256.283 (3), or for any party authorized by statute to investigate the conduct of any attorney, and to conduct investigations and prosecute disbarment proceedings. The district attorney of the county of the defendant's residence shall in his county render such assistance in investigations and preparation for trial as such counsel shall reasonably request.

(4) COMPENSATION. Each member of the board shall be paid $25 per day when actually and necessarily engaged in his duties and in addition his actual and necessary expenses. Counsel for the board shall be paid compensation as fixed by the court.

(5) RULES. The supreme court shall, from time to time, promulgate rules relating to the qualifications of applicants for examination, their courses of study and the standard of acquirements to entitle them to admission to practice law in this state, and such other rules relating to the examination of applicants for admission to the bar as the court deems necessary or desirable. The board may adopt such rules and forms relating to its procedure and holding and conducting its meetings and investigations as it deems necessary.

History: Sup. Ct. Order, 48 W (2d) vii; Sup. Ct. Order, 51 W (2d) vii; Sup. Ct. Order, 64 W (2d) vii.

256.282 Bar examination. The bar examination shall be administered by the board of state bar commissioners and shall consist of questions on the subject matter of the courses set forth in s. 256.28 (1). Applications for permission to take the examination shall be filed with the board. To be eligible for the examination, an applicant shall have received a degree in law from a law school approved by the council on legal education and admission to the bar of the American bar association. A fee of $50 shall be paid to the board by each applicant before taking any examination.

History: Sup. Ct. Order, 48 W (2d) vii.

256.283 Disciplinary action against attorneys. (1) SUSPENSION OR REVOCATION OF LICENSE. The authority or license granted to any person to practice law in this state may be suspended or revoked and annulled in the manner prescribed in this section.

(2) INVESTIGATION OF COMPLAINTS AGAINST ATTORNEYS. (a) Whenever the board receives reliable information that any attorney has been guilty of misconduct which would, if true, justify some form of professional discipline by the supreme court, or is mentally infirm, mentally ill or addicted to intoxicants or drugs, the board shall investigate the facts in reference thereto, and after such investigation, file a complaint thereon when in its judgment the facts so warrant.

(b) In the investigation of an attorney, any member of the board of state bar commissioners may, at the request of such board, or its counsel, issue his subpoena, for such proof as may be requested, to appear before the board or the member of the board issuing the subpoena, at a time and place fixed therein, and thereafter proceedings may be had in respect thereto in the same manner as provided in s. 133.06. The record of such proceeding shall be privileged and not subject to inspection or discovery except upon written order of the supreme court, or a justice thereof.

(c) Whenever the board shall directly or through counsel appointed under s. 256.281 (3), file with any circuit court commissioner of this state a written statement or declaration that it has received reliable information to the effect that any attorney has been guilty of misconduct which would, if true, justify some form of professional discipline by the supreme court, the circuit court commissioner shall issue his subpoena for such persons as may be requested by the state bar commissioners or their counsel requiring them to appear before him at a time and place fixed in the subpoena, and proceedings may thereupon be had in respect thereto in the same manner as provided in s. 133.06, and all of the provisions of said statute insofar as the same may be applicable or adaptable to the proceeding shall apply thereto. Whenever the board, directly or through such counsel, requests, the clerk of the circuit court in any county shall issue a subpoena for such persons as may be requested, requiring them to appear before the board or before any member thereof at the time and place fixed in the subpoena, and like proceedings may thereupon be had before the board or such member thereof. The fees of the court commissioner, clerk and witnesses shall be certified by the chief justice and paid as provided in sub. (9).

(d) Whenever a county bar association described in sub. (3) receives reliable information that any attorney has been guilty of misconduct which would, if true, justify some form of professional discipline by the supreme court, it may refer the matter to the board of state bar commissioners or investigate it. In order to aid the investigation by such bar association, the president thereof, after authority by resolution of its governing body, may file a verified petition with the supreme court of this

state, which shall allege that the bar association is conducting an investigation pursuant to this section and that the governing body of the bar association has, by resolution, authorized the president to request the issuance of subpoenas for various persons to be designated by the president. The supreme court may thereupon enter an order directing any court commissioner of the state with whom a copy of the order may be filed to issue his subpoena for such persons as the president shall designate; and in the order the supreme court may likewise appoint an attorney pursuant to s. 256.281 (3) to conduct the proceedings before such court commissioner. Upon the filing of a copy of the order with a court commissioner it shall be the duty of the court commissioner to issue his subpoenas for such persons as the president of the bar association may designate and shall require such persons to appear before such court commissioner at a time and place to be fixed in the subpoena. The persons subpoenaed shall be sworn and shall testify, and the testimony may be taken by a reporter, but need not be so taken, and if transcribed by a reporter shall be read to or by the witness and subscribed by him, unless the witness shall stipulate upon the record that the reading of the transcript of such testimony to or by the witness and his signature thereto are waived, and that the transcript may be used with like force and effect as if read and subscribed by him. The attendance of the witness under the subpoena may be compelled by any circuit court, and the attendance for the purpose of reading and subscribing the transcript may be compelled in the same manner that his attendance to be examined may be compelled. Upon conclusion of the proceedings which shall not be public, the record thereof shall be transmitted to the governing body of the local bar association. The commissioner shall be entitled to the fees provided in s. 252.17. All fees, costs and expenses incident to the inquiry shall be paid by the county bar association requesting the same.

(2m) ACTION BY THE BOARD. In addition to any other power that it may have, the board may do either of the following:

(a) Terminate its investigation and close its file, but such action shall not bar a further investigation and appropriate action at a later date, and charges in respect to which such action was taken may be considered by the board in connection with new evidence or new charges against the same lawyer.

(b) After notice to the lawyer and affording him an opportunity to be heard, make preliminary findings that the grievance has sufficient merit to justify the filing of a complaint for discipline, but that the nature of the misconduct is not so aggravated as to require disbarment or suspension, and upon such preliminary findings and approval by the supreme court, if the lawyer shall consent, issue a public reprimand to be published in the official publication of the state bar of Wisconsin, in lieu of filing a complaint for discipline by the court.

(3) INITIATION OF DISCIPLINARY ACTION. (a) A written complaint against any attorney may be filed by:

1. The board of state bar commissioners. Such complaint may be verified by its president or in his absence by the vice president, or in their absence by any member of the board designated by resolution;

2. Three residents of the state, one of whom shall be the district attorney of the county where the misconduct complained of occurred;

3. A county bar association having as members more than 500 attorneys licensed to practice law in this state, by the president in its name upon resolution of its governing body, but only against an attorney practicing, residing or employed in its county;

4. The state bar of Wisconsin upon resolution of its board of governors. Such complaint may be verified by its president or in his absence by the vice president.

(b) The complaint may be either positive, or on information and belief, and must be signed and verified by the oath or affirmation of those who make it. It must be entitled in the name of the state of Wisconsin against the defendant, and be addressed to the justices of the supreme court, contain the name and residence of the defendant and state with clearness and certainty the facts constituting the alleged misconduct of the defendant. It shall be presented to the chief justice of the supreme court without filing and he shall bring the matter before the supreme court.

(4) ORDER TO ANSWER, SERVICE, FILING. The supreme court may by order require the defendant to answer the complaint and shall cause the complaint and order to be served upon him in the same manner as a summons. The original complaint and order, with proof of service, shall forthwith, after service, be forwarded to the clerk of the supreme court who shall then file the complaint and order in his office. If the attorney cannot be found as indicated by the sheriff's return of service, the complaint, order and return shall be filed with the clerk of the supreme court and service of the complaint and order to answer, or any other notice required by this section, may be had by mailing a copy thereof to the defendant at the last address furnished by him to the state bar of Wisconsin. Such mailing shall constitute personal service.

(5) ANSWER, DEFENSE PROCEDURES. The defendant may file a written answer and may file

an affidavit of prejudice as provided in sub. (6). His answer to the complaint shall be served on the plaintiff within 20 days after service upon him of the complaint and filed with the clerk of the supreme court within 5 days after service on the plaintiff. Any answer shall specifically admit or deny the allegations of the complaint. It may incorporate the objection that the supreme court does not have jurisdiction, or that the acts or omissions alleged in the complaint do not constitute misconduct which would warrant the imposition of discipline.

(6) REFEREE; HEARING BEFORE, REPORT. Upon the filing of the defendant's answer the supreme court shall appoint a referee to hear the cause, or so much thereof as the court may determine to refer, and to report findings to the court, together with recommendations as to the judgment to be made, if such recommendations are requested by the court. The referee shall promptly hold a prehearing conference similar to the provisions of s. 802.10 (2) and for the purposes therein specified. The referee shall give to the defendant and counsel for the board of state bar commissioners or the counsel appointed for the parties making the complaint at least 20 days' notice in writing of the time and place of hearing. The proceeding shall be in the nature of a reference, the authority of the referee to be defined by the supreme court and where no special authority or procedure is specified in the order of reference, the hearing shall be governed by the rules and practice in equitable actions, except as different procedure is herein prescribed. The hearing shall be held in the county of the defendant's residence or in the case of a nonresident, in such county as is directed by the supreme court, provided that during its progress the sittings may, in the discretion of the referee, be changed as often as may be found convenient from one county to any other. Upon motion by counsel for the board made at any time prior to the conclusion of the hearing, and upon just cause, the referee may permit the amendment of the complaint to include matters brought to the board's attention after the filing of the complaint and upon counsel filing an affidavit that counsel has had prior approval of such amendment by 3 or more board members. If such motion be granted, the referee shall grant such adjournments and further orders as the referee deems necessary in the interest of justice. All proceedings shall be recorded verbatim by a stenographer or reporter to be appointed by the referee, and together with all the testimony of witnesses shall be transcribed, certified and filed with other papers in the case.

(7) CRIMINAL CONVICTION CONSTITUTES CONCLUSIVE PROOF OF GUILT. In any disciplinary proceeding instituted against an attorney based on a conviction, the certificate of his conviction shall be conclusive evidence of his guilt of the crime for which he has been convicted.

(8) NOTICE TO DEFENDANT; ISSUE JOINED; TRIAL; JUDGMENT. Upon the filing of the report of the referee in the supreme court which shall include findings of fact and recommendations, if any, notice thereof shall be given by the clerk of the supreme court to the defendant or the attorney who appeared for the defendant and to the counsel for the board of state bar commissioners or for the parties making the complaint. All objections or motions which either party shall see fit to make thereto shall be filed within 20 days of the date of said notice. Within 40 days after the filing of objections or motions, the plaintiff shall serve on the defendant and file its brief and appendix, in accordance with ss. 251.181 and 251.34 to 251.38. The defendant shall, within 30 days after service of plaintiff's brief and appendix, serve and file a brief and supplemental appendix (if any). The plaintiff may serve and file a reply brief within 15 days after service on it of the defendant's brief. The cause shall be placed on assignment for oral argument. By the judgment the court may adjudge as follows:

(a) Absolute revocation or annulment of defendant's license to practice law in the state of Wisconsin.

(b) Temporary suspension of license on such conditions as to the court shall seem just.

(c) Censure or reprimand.

(d) The judgment may contain such other provisions as the court may deem proper, including a requirement that the defendant pay all or a part of the expenses allowed under sub. (9). If such expenses are not paid by the defendant within a reasonable time, they shall be collected by the district attorney of the county where defendant resides, and by him paid into the supreme court for deposit in the state treasury.

(9) EXPENSES OF PROCEEDINGS. The expenses of the proceedings, including the witnesses', reporter's, clerk's, sheriff's, referee's and other officers' fees, and fees and disbursements of plaintiff's counsel, when approved by the supreme court, shall be certified by the chief justice to the department of administration, which shall thereupon draw a warrant on the state treasurer for the respective amounts allowed in favor of the parties named as entitled thereto. Such amounts shall be charged to the appropriation provided in s. 20.680 (4) (b).

(10) OATH OF COMMISSIONERS' ATTORNEY, REFEREE. The counsel for the state bar commissioners or for the parties making the complaint and the referee herein provided for shall take and

subscribe and file with the clerk of the supreme court the usual and customary oath of office.

History: Sup. Ct. Order, 48 W (2d) vii; Sup. Ct. Order, 52 W (2d) xii-a; Sup. Ct. Order, 56 W (2d) vii; Sup. Ct. Order, 67 W (2d) 775; 1975 c. 39 s. 734; 1975 c. 160, 199, 218.

See note to art. I, sec. 7, citing State v. Hildebrand, 48 W (2d) 73, 179 NW (2d) 892.

An attorney's failure to file state income tax returns, attributable to negligence and procrastination on his part, constituted unprofessional conduct and subjected him to discipline. State v. Wheeler, 51 W (2d) 129, 186 NW (2d) 327.

Duty of a lawyer who arranges to have a will drafted for a client wherein he is beneficiary discussed. State v. Beaudry, 53 W (2d) 148, 191 NW (2d) 842.

An attorney convicted of commercial gambling may be suspended from practice; an inference may be drawn against him if he invokes the 5th amendment. State v. Postorino, 53 W (2d) 412, 193 NW (2d) 1.

Sale of property in estate to attorney's wife and fee-splitting with a realtor discussed as grounds for suspension. State v. Hartman, 54 W (2d) 47, 194 NW (2d) 653.

See note to 256.286, citing State v. Heilprin, 59 W (2d) 312, 207 NW (2d) 878.

An attorney's license may be suspended when he fails to answer the complaint against him. State v. Bursten, 61 W (2d) 668, 213 NW (2d) 747.

Mishandling trust funds and failure to comply or answer court orders, directives and instructions are grounds for suspension. State v. Oakey, 64 W (2d) 648, 221 NW (2d) 917.

An attorney who filed a false and fraudulent federal income tax return and who commingled client funds with own was guilty of unprofessional conduct warranting disciplinary action. State v. Kondos, 66 W (2d) 119, 224 NW (2d) 211.

An attorney who pleaded guilty to 6 misdemeanor violations including fraudulent application for motor vehicle registration, improper use of evidence of registration, theft, and 3 counts of failure to register an aircraft, and on this proceeding is found to have furnished a false financial statement to a bank to achieve credit for an automobile dealership in which he was a principal; fraudulently represented that an automobile was free of liens and encumbrances; forged the signature of a bank official on a certificate of automobile title; commingled personal, dealership and client funds in his trust account; misappropriated funds belonging to an insurer as a result of a settlement; and been untruthful and evasive before bar commissioners and referee is guilty of unprofessional conduct for which his license to practice law is revoked and costs imposed. State v. McNamara, 68 W (2d) 701, 229 NW (2d) 698.

256.284 Procedure for accepting attorney's resignation. (1) SUBMISSION OF RESIGNATION. An attorney who is the subject of an investigation into allegations of misconduct on his part may submit his resignation by submitting to the board of state bar commissioners a verified petition stating that he desires to resign. Such petition shall state that his resignation is freely and voluntarily rendered; that he is not being subjected to coercion or duress; that he is fully aware of the implications of submitting his resignation; that he is aware that there is a presently pending investigation into allegations that he has been guilty of misconduct, the nature of which he shall specifically set forth; that the investigation record will be filed with the supreme court as a part of the record; and that he submits his resignation because he knows that he could not successfully defend against the complaint under investigation or the formal complaint, and that he waives his rights to defend against the complaint, if one has been filed.

(2) DISBARMENT UPON RESIGNATION. On receipt of such petition, the board of state bar commissioners shall file it with the supreme court and the court may enter an order disbarring the attorney on consent.

(3) RECORDS PRIVILEGED. The contents of a petition of an attorney setting forth his resignation from the bar and the investigation record filed therewith shall not be publicly disclosed or made available for any purpose, except on order of the supreme court.

History: Sup. Ct. Order, 48 W (2d) vii.

256.285 Suspension on conviction of crime. (1) SUMMARY SUSPENSION. Upon receiving satisfactory proof that an attorney has been convicted of a serious crime, the supreme court may summarily suspend the attorney, pending final disposition of a disciplinary proceeding to be commenced under s. 256.283, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, and regardless of the pendency of an appeal.

(2) SERIOUS CRIME, DEFINITION. The term "serious crime" means a felony or any lesser crime which, in the opinion of the court, reflects upon the attorney's fitness.

(3) REINSTATEMENT ON REVERSAL. An attorney who has been summarily suspended upon conviction will be reinstated immediately on the reversal of his conviction. Such reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(4) FILING CERTIFICATE OF CONVICTION. The clerk of any court within the state in which an attorney is convicted of any crime except a traffic violation not constituting a felony, will transmit a certificate of conviction to the clerk of the supreme court within 5 days after the conviction.

History: Sup. Ct. Order, 48 W (2d) vii.

256.286 Suspension of attorney for medical reasons. (1) AUTOMATIC SUSPENSION. Any attorney who shall have been adjudged to be mentally incompetent or involuntarily committed to a mental hospital shall thereupon be automatically suspended for medical reasons from the practice of law. The court so adjudicating or committing shall forward to the clerk of the supreme court a copy of the adjudication or commitment.

(2) PROCEEDINGS UPON ALLEGATION OF INCAPACITY. Whenever in the judgment of the board of state bar commissioners any attorney, because of mental infirmity, mental illness, or addiction to intoxicants or drugs, should not be permitted to practice law because of the danger to the interests of his clients and the public, said board may either work out a voluntary

suspension of the lawyer's license to practice law by agreement or file a complaint with the court for the medical suspension of the lawyer's license to practice law, in either case until in the judgment of the said board the lawyer shall be restored to health and reliability, and in either case subject to the other or further direction of the court. If a complaint is filed, the court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including examination of the attorney by such qualified medical experts as the court shall designate. If the court finds that the attorney is incapacitated from continuing to practice law, it may enter an order suspending him on the ground of such disability for an indefinite period and until the further order of the court and any pending disciplinary proceedings against the attorney shall be held in abeyance.

(3) GUARDIAN FOR ATTORNEY AND INVENTORY OF FILES. Whenever in the judgment of the board of state bar commissioners any attorney is mentally incompetent, the said board may petition the county court of the county in which the attorney resides for the appointment of a guardian in his behalf under ch. 880. In any case where an attorney has been declared incompetent and a guardian appointed, the court having jurisdiction of such proceeding shall, upon such appointment, forward a certified copy of the order of appointment to the clerk of the supreme court and to the state bar of Wisconsin, and may enter an order as to the disposition of the matters pending in such attorney's practice, and providing for an inventory of his files.

(4) PROCEDURE WHEN ATTORNEY CLAIMS DISABILITY DURING COURSE OF PROCEEDING. If, during the course of a disciplinary proceeding, the attorney contends that he is suffering from a disability by reason of mental infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for him to adequately defend himself, the court thereupon shall enter an order suspending the attorney from continuing to practice law until a determination is made of his capacity to continue the practice of law in a proceeding instituted in accordance with sub. (2).

(5) REINSTATEMENT UPON TERMINATION OF DISABILITY. Any attorney suspended under this section shall be entitled to apply for reinstatement at such intervals as the court may direct in the order of suspension or any modification thereof. Such application shall be granted by the court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon such application, the court may take or direct such action as it deems necessary or proper including a determination whether the attorney's disability has been removed and including a direction of an examination of the attorney by such qualified medical experts as the court shall designate. In its discretion, the court may direct that the expense of such an examination shall be paid by the attorney. Where an attorney has been suspended by an order in accordance with sub. (1) and thereafter has been judicially declared to be competent, the court may dispense with further evidence that his disability has been removed and may direct his reinstatement upon such terms as are deemed proper and advisable.

(6) NOTICE TO ATTORNEY AND APPOINTMENT OF COUNSEL. (a) In any proceeding or action under this section, notice shall be given to the attorney involved as provided in s. 256.283 (4).

(b) Whenever any action is taken against an attorney under this section or an attorney is suspended for incapacity or disability, the court may appoint an attorney to represent him and his interests.

(7) WAIVER OF DOCTOR-PATIENT PRIVILEGE UPON APPLICATION FOR REINSTATEMENT. The filing of an application for reinstatement by an attorney suspended under this section shall be deemed to constitute a waiver of any doctor-patient privilege existing between the attorney and any psychiatrist, psychologist, physician or hospital who or which has examined or treated the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or at which the attorney has been examined or treated since his suspension and he shall furnish to the court written consent to each to divulge such information and records as requested by court appointed medical experts or by the supreme court.

(8) PAYMENT OF EXPENSES OF PROCEEDINGS. The court may fix the compensation to be paid to any attorney or medical expert appointed by the court under this rule. This compensation may be directed to be paid as an incident to the costs of the proceeding in which the charges are incurred and shall be charged to the appropriation provided in s. 20.680 (4) (b).

History: Sup. Ct. Order, 48 W (2d) vii; 1971 c. 41 s. 12; 1973 c. 12; 1975 c. 39 s. 734.

Mental illness must be proved by clear, satisfactory and convincing evidence State v. Cadden, 56 W (2d) 320, 201 NW (2d) 773.

A personality disorder (aggressive and hostile actions) is not a cause for medical suspension, but until cured or controlled it may be ground for disciplinary action under 256.283 State v. Heilprin, 59 W (2d) 312, 207 NW (2d) 878.

256.287 Activities on revocation or suspension of license. (1) WINDING UP THE PRACTICE. Unless otherwise ordered by the court, a suspended or disbarred lawyer shall, within the first 30 days of his disbarment or suspension, make all arrangements for the permanent or temporary closing of his office, as the case may be, or of the winding up of his participation in the law firm, if there be such, and for such purposes only may be present in the office to aid in clients or successor attorneys procuring the files, and in the making by others of arrangements for the taking over of clients' work in process. If the suspended or disbarred lawyer shall abscond, either prior or subsequent to his suspension, or if he shall not be available or able, for any other reason, to deliver or assist in the delivery of his former clients' files and property, the court may by order authorize a representative of the state bar of Wisconsin or of the local bar association, or a public official, to enter the offices of such suspended or disbarred attorney or other location as may be necessary for the sole purpose of protecting the clients' rights, the clients' files and the clients' property, and the delivery thereof to the clients or their successor counsel.

(2) PROHIBITED ACTIVITIES. A suspended or disbarred lawyer during his suspension or disbarment may not engage in any law work activity, except for a commercial employer not itself engaged in the practice of law. Law work activity shall include, in the case of a suspended or disbarred attorney, matters associated with the practice of law, notwithstanding the fact that such work may customarily be done by law students, law clerks or other paralegal personnel.

(3) NONPERMITTED ACTIVITIES OF OTHER LAWYERS. A member of the bar of this state may not use the name of a disbarred or suspended lawyer in a firm name or association in the practice of law, and may not authorize or knowingly permit a disbarred or suspended lawyer to:

(a) Interview clients or witnesses or participate therein, except that in the course of employment by a commercial employer he may interview witnesses and participate in the investigation of claims;

(b) Prepare cases for trial;

(c) Do any legal research or other law work activity in a law office;

(d) Write briefs or trial memoranda; or

(e) Perform any services for him either on a salary or a percentage or a fee-splitting basis, except that he may share attorney's fees on a quantum meruit basis only for services performed prior to his disbarment or suspension, and based solely on the value to the lawyer of the services theretofore performed. An agreement with reference thereto shall be made at the beginning of the new representation and in case of disagreement the fee arbitration committee shall arbitrate the same.

History: Sup. Ct. Order, 56 W (2d) vii

256.29 Attorneys regulated. (1) ATTORNEY'S OATH. Each person admitted to practice as a member of the bar of any court of this state shall subscribe the roll of attorneys to be kept by the clerk and shall in open court take an oath or affirmation of the tenor following, to wit: I do solemnly swear:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

(2) UNPROFESSIONAL CONDUCT. It is hereby declared to be unprofessional conduct and grounds of disbarment for any attorney to violate any of the provisions of the oath prescribed by this section; or to stir up strife and litigation; or to hunt up causes of action and inform thereof, in order to be employed to bring suit, or to breed litigation by seeking out those having claims for personal injuries or other grounds of action in order to secure them as clients; or to employ agents or runners for like purposes or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases or business to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed in influencing the criminal, the sick, the injured, the ignorant or others to seek his professional services; or to violate the disciplinary rules of the American bar

association code of professional responsibility, as adopted by the supreme court.

(3) VOID CONTRACT, LEGAL EFFECT. Any contract of employment obtained or made in violation of this section shall be absolutely void as to the attorney; but the client may recover any compensation paid thereunder to or for or received by the attorney on account of such employment. The attorney shall not be allowed to prosecute or defend the action or proceeding contemplated by such employment.

History: Sup. Ct. Order, 48 W (2d) vii; 1975 c. 94 s. 91 (12); 1975 c. 199.

In a will contest where objection to the execution of the will witnessed by an attorney representing the proponent is in issue, the attorney should withdraw from the case (which requirement is not satisfied by having his partner try the case), the rule being a question of ethics and not one of competency of testimony. Estate of Elvers, 48 W (2d) 17, 179 NW (2d) 881

Harassment of a judge to force him to change the operation of his court or resign, by threats of criminal prosecution, constitutes unprofessional conduct. State v. Eisenberg, 48 W (2d) 364, 180 NW (2d) 529.

Suspension on failure to answer complaint. State v. Stumpf, 63 W (2d) 340, 217 NW (2d) 276.

An attorney is a professional not merely 8 hours, 5 days a week, but 24 hours every day, and his morality or lack thereof may be revealed by delinquencies indicating an absence of honesty, probity, integrity, and fidelity to trusts despite the fact that the incidents evidencing these insufficiencies do not involve transactions with his clients. State v. McNamara, 68 W (2d) 701, 229 NW (2d) 698.

Professional responsibility and probate practices. Martin, 1975 WLR 911.

256.293 Trust accounts required. (1) A member of the state bar shall not commingle the money or other property of a client with his own, and he shall promptly report to the client the receipt by him of all money and other property belonging to such client. Unless the client otherwise directs in writing, whenever an attorney collects any sum of money upon any action, claim or proceeding, either by way of settlement or after trial or hearing, he shall promptly deposit his client's funds in a bank or trust company, authorized to do business in the State of Wisconsin, in a bank account separate from his own account and clearly designated as "Clients' Funds Account" or "Trust Funds Account", or words of similar import. Unless the client otherwise directs in writing, securities of a client in bearer form shall be kept by the attorney in a safe deposit box at a bank or trust company authorized to do business in the State of Wisconsin, which safe deposit box shall be clearly designated as "Clients' Account" or "Trust Account", or words of similar import, and be separate from the attorney's own safe deposit box.

(2) A member of the state bar shall maintain and preserve for at least 6 years complete records pertaining to client's funds or assets received by him which are required to be distributed or segregated by sub. (1). Such records shall include his trust fund checkbooks and the stubs thereof, bank statements of such account, vouchers and canceled checks thereon and his account books showing dates, amounts and ownership of all deposits to and withdrawals by check or otherwise from such accounts, and all of such records shall be deemed to have public aspects as related to such member's fitness to practice law. Upon request of the board of state bar commissioners, or upon direction of the supreme court, such records shall be submitted to the board for its inspection, audit, use and evidence under such conditions to protect the privilege of clients as the court may provide. Such records, or an audit thereof, must be produced at any disciplinary proceeding involving the attorney wherever material. Failure to produce such records shall constitute unprofessional conduct and grounds for disciplinary action.

History: Sup. Ct. Order, 48 W (2d) vii

The issuance by an attorney of 49 checks drawn upon his clients' trust account within a 13-month period—some for personal purposes or for loans to others, and all dishonored by the bank for lack of sufficient funds—constituted unprofessional conduct for which he is suspended from the practice of law for one year and ordered to pay up to $500 of the costs of this proceeding. State v. Stoveken, 68 W (2d) 716, 229 NW (2d) 224.

256.294 Group legal services. (1) The furnishing of legal services by a member of the state bar pursuant to an arrangement for the provision of such services to the individual member of a group, as herein defined, at the request of such group, is not of itself in violation of the rules of professional responsibility prohibiting solicitation and like activities if the arrangement:

(a) Permits any member of the group to obtain legal services independently of the arrangement from any attorney of his choice, and

(b) Is so administered and operated as to prevent all of the following:

1. Such group, its agents or any member thereof from interfering with or controlling the performance of the duties of such member of the state bar to his client; and

2. Such group, its agents or any member thereof from directly or indirectly deriving a profit from or receiving any part of the consideration paid to the member of the state bar for the rendering of legal services thereunder; and

3. All publicity and solicitation activities concerning the arrangement except by means of simple, dignified announcements setting forth the purposes and activities of the group, or the nature and extent of the legal services, or both.

(2) Nothing in this section shall prohibit a statement in response to individual inquiries as to the identity of the member or members of the

state bar rendering or to render the services, giving the name or names, addresses and telephone numbers of such member or members.

(3) As used in this section, a "group" means a professional association, trade association, labor union or other nonprofit organization, or combination of persons incorporated or otherwise whose primary purposes and activities are other than the rendering of legal services, and shall include groups furnishing legal services to indigent individuals on other than a fee basis.

(4) (a) A member of the state bar furnishing legal services pursuant to an arrangement shall advise the state bar thereof within 60 days after entering into the same. Thereafter he shall register with and advise the state bar, on forms provided by it, and within 30 days of receipt of such forms, of the following matters: the name of the group, its address, whether it is incorporated, its primary purposes and activities, the number of its members and a general description of the types of the legal services offered pursuant to the arrangement. He shall annex to and include as a part of such registration a copy of the current plan, including any fee schedule. Annually, on or before January 31, he shall report to the state bar, on forms provided by it, the number of members in the group to whom legal services were rendered during the calendar year, and amendments to the plan, including changes in the fee schedule, during such preceding year.

(b) All information filed pursuant hereto, except the name and address of the group, the fact that it has an arrangement for the provision of legal services and the names of members of the state bar providing such services, shall be confidential; providing such registrations and reports shall be available to appropriate representatives of the supreme court and the state bar for information purposes and for disciplinary and ethical investigations or proceedings.

(5) Failure to make and file a timely registration or report as to a group arrangement as required herein shall constitute unprofessional conduct and grounds for disciplinary action.

History: Sup Ct. Order, 55 W (2d) xi

256.295 Barratry. (1) SOLICITING LEGAL BUSINESS. It shall be unlawful for any person to solicit legal matters or a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services.

(2) SOLICITATION OF A RETAINER FOR AN ATTORNEY. It shall be unlawful for any person to communicate directly or indirectly with any attorney or person acting in his behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal matters or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

(3) EMPLOYMENT BY ATTORNEY OF PERSON TO SOLICIT LEGAL MATTERS. It shall be unlawful for an attorney to employ any person for the purpose of soliciting legal matters or the procurement through solicitation of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

(4) PENALTY. Any person guilty of any violation of this section shall be imprisoned not more than 6 months or fined not exceeding $500.

256.30 Penalty for practicing without license. (1) Every person, who without having first obtained a license to practice law as an attorney of a court of record of Wisconsin, as provided by law, shall practice law within the meaning of sub. (2) of this section, or hold himself out as licensed to practice law as an attorney within the meaning of sub. (3) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, in addition to his liability to be punished as for a contempt.

(2) Every person who shall appear as agent, representative or attorney, for or on behalf of any other person, or any firm, copartnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who shall otherwise, in or out of court for compensation or pecuniary reward give professional legal advice not incidental to his usual or ordinary business, or render any legal service for any other person, or any firm, copartnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

(3) Every person who shall use the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his own name or any sign, advertisement, business card, letterhead, circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand such person to be authorized to practice law or who shall in any other manner represent himself either verbally or in writing, directly or indirectly, as authorized to practice law in this state, shall be deemed to be holding himself out as licensed to practice law as an attorney within the meaning of this section.

(4) No person shall practice law in this state under any other Christian or given name or any other surname than that under which he was

originally admitted to the bar of this or any other state, in any instance in which the state bar commissioners shall, after a hearing, find that practicing under such changed name operates to unfairly compete with another practitioner or to mislead the public as to identity or to otherwise result in detriment to the profession or the public. Any person violating this subsection shall be subject to the penalty provided in subsection (1). This subsection does not apply to a change of name resulting from marriage or divorce.

Officers and employes of a bank are not illegally practicing law where they fill out lease forms which have been designed and prepared by the attorney representing the owner of the property being leased under a property management agreement between the owner and the bank. 60 Atty Gen 114.

256.32 Trial judge not to be counsel. No person shall be employed or allowed to appear as counsel or attorney before any court in any action which shall have been previously determined before him as a judge or justice.

256.34 Attorney not to be bail, etc. No attorney practicing in this state shall be taken as bail or security on any undertaking, bond or recognizance in any action or proceeding, civil or criminal, nor shall any practicing attorney become surety on any bond or recognizance for any sheriff, constable, clerk of court or municipal justice.

256.35 Blank process to attorneys. The clerks of the courts of record may deliver to any attorney of their courts, in blank, any and all processes which may be requisite for the prosecution of or carrying on any action or special proceeding in such courts, or the enforcement of any order or judgment therein. All processes, so delivered, shall be signed by the clerk officially and have the seal of the court impressed thereon and may be completed by the attorney, and shall have the same force as if the same were perfected by the clerk.

256.36 Lien on proceeds of action to enforce cause of action. Any person having or claiming a right of action, sounding in tort or for unliquidated damages on contract, may contract with any attorney to prosecute the same and give such attorney a lien upon such cause of action and upon the proceeds or damages derived in any action brought for the enforcement of such cause of action, as security for his fees in the conduct of such litigation; when such agreement shall be made and notice thereof given to the opposite party or his attorney no settlement or adjustment of such action shall be valid as against the lien so created, provided that such agreement for fees shall be fair and reasonable, and this section shall not be construed as changing the law in respect to champertous contracts.

256.37 When action settled by parties, what proof to enforce lien. If any such cause of action shall have been settled by the parties thereto after judgment has been procured without notice to the attorney claiming such lien, such lien may be enforced and it shall only be required to prove the facts of the agreement by which such lien was given, notice to the opposite party or his attorney and the rendition of the judgment, and if any such settlement of the cause of action is had or effected before judgment therein, then it shall only be necessary to enforce said lien to prove the agreement creating the same, notice to the opposite party or his attorney and the amount for which said case was settled, which shall be the basis for said lien and it shall at no time be necessary to prove up the original cause of action in order to enforce said lien and suit.

256.38 Consent of attorney in settlement of actions for personal injuries. No settlement or adjustment of any action which shall have been commenced to recover damages for any personal injury or for the death as a result of any personal injury in which an attorney shall have appeared for the person or persons having or claiming a right of action for such injury or death shall be valid, unless consented to in writing by such attorney or by an order of the court in which said action is brought approving of such settlement or adjustment.

256.39 Judges may direct calendars to be printed. The judges of the several courts of record having civil jurisdiction may, in their discretion, direct the respective clerks thereof to prepare printed calendars of the causes to be heard at the several terms, which shall be in the form and contain such matter as the judge may direct. The expense of the printing shall be paid out of the county treasury.

256.40 Law library. Any circuit judge may, whenever he deems it desirable, purchase or direct the clerk of the circuit court for any county in his circuit to purchase law books and subscribe for the periodical reports of any of the courts of the several states or territories or of the United States, for any county in his circuit, provided the cost of such books and reports, including pocket parts and continuing services, shall not exceed $1,500 for any county in one year, unless the board of supervisors of such county authorizes the expenditure of a larger sum. Whenever such purchase or subscription is made such clerk shall have each volume of books received stamped or

branded with the name of his county and take charge of the same for the use of the courts, judges, attorneys and officers thereof. The cost of such volumes shall be paid by the county treasurer upon the presentation to him of the accounts therefor, certified to by the clerk of the circuit court and the circuit judge.

256.41 Law library; Milwaukee county. The county board of any county having a population of 250,000 or more may acquire by gift, purchase or otherwise, a law library and law books, and shall house the law library and additions in the courthouse or in suitable quarters elsewhere, and may make, and enforce by suitable penalties, rules and regulations for the custody, care and preservation of the books and other property contained in said library. The county board shall provide reasonable compensation for the law librarian and such assistants as are necessary for the proper care and maintenance of the library. The librarian and assistants shall be appointed as the county board determines, pursuant to ss. 63.01 to 63.17. In such a county the librarian shall perform all of the duties imposed by s. 256.40 upon the clerk of the circuit court and such clerk shall be free from all responsibility imposed by that section. The purchase of additional law books, legal publications, periodicals and works of reference for the library may be directed by each of the circuit judges of such county under s. 256.40. The library shall be kept open every day throughout the year, except Sundays and holidays, for such hours as the county board directs, but the county board may determine by ordinance that the library be closed on Saturdays. Attorneys and the general public shall be permitted to use the books in the library in the building housing the library under such rules and regulations as the county board adopts.

History: 1971 c. 111.

256.45 Sharing of compensation by attorneys prohibited. It is unlawful for any person to divide with or receive from, or to agree to divide with or receive from, any attorney or group of attorneys, whether practicing in this state or elsewhere, either before or after action brought, any portion of any fee or compensation, charged or received by such attorney or any valuable consideration or reward, as an inducement for placing or in consideration of having placed, in the hands of such attorney, or in the hands of another person, a claim or demand of any kind for the purpose of collecting such claim, or bringing an action thereon, or of representing claimant in the pursuit of any civil remedy for the recovery thereof; but this section does not apply to an agreement between attorneys and counselors at law when associated in the conduct of legal matters to divide between themselves the compensation to be received. Any person violating this section shall be fined not to exceed $500 or imprisoned not to exceed 6 months.

256.46 Reporter not to take statements of injured persons. No phonographic reporter for any court of record in the state of Wisconsin or any of his assistants shall be employed by any person or corporation to take the statement of any injured or other person in any way relating to the manner in which the person was injured or killed or the extent of personal injuries, and any reporter or assistant violating the provisions hereof shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation hereof. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section.

256.47 Taxes of this state enforced in other states. (1) The courts of this state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect of the liability for taxes lawfully imposed by the laws of this state, and the officials of such other state are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the secretary of state of such other state that such officials have the authority to collect the taxes sought to be collected by such action shall be conclusive proof of that authority.

(2) The attorney-general is empowered to bring action in the courts of other states to collect taxes legally due the state.

(3) The term "taxes" as herein employed shall include:

(a) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise.

(b) Any and all penalties lawfully imposed pursuant to a taxing statute.

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

256.48 Guardian ad litem must be an attorney. (1) In all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state and shall be allowed reasonable compensation for his services, reasonable compensation to be such as is customarily charged by attorneys in this state for comparable services. If

the attorney of record is also the guardian ad litem, he shall be entitled only to attorney fees and shall receive no compensation for his services as guardian ad litem.

(2) If the statutes do not specify how the fee of the guardian ad litem is paid, the ward shall pay such fee. The court may, however, in cases involving real or personal property in which the ward claims or may have a right or interest, order payment out of such property.

(3) No guardian ad litem shall be permitted to receive any money or property of his ward, nor shall any bond be required of a guardian ad litem, but all money or property of his ward shall be paid or delivered to a general guardian of his property subject to the exceptions of s. 880.04.

(4) No person shall be appointed guardian ad litem for a plaintiff without the written consent of the person appointed.

History: Sup. Ct. Order, 50 W (2d) vii; 1971 c. 211.

Cross Reference: See 879.23 (4) for parent as guardian in probate matters.

Comment of Judicial Council, 1971: A guardian ad litem shall: (1) Be an attorney and be allowed reasonable compensation as is customarily charged by attorneys for comparable services. If the attorney of record is also the guardian ad litem, only one fee is allowed. (2) Be compensated by the ward or out of the ward's property. (3) Not be permitted to receive any money or property of the ward. (4) Not be appointed for a plaintiff without the appointed person's consent. Subsection (1) is in present law; subs. (3) and (4) are the same as present law. [Re Order effective July 1, 1971]

256.49 Compensation of attorneys appointed by court. Notwithstanding any other provision of the statutes, in all cases where the statutes fix a fee and provide for the payment of expenses of an attorney to be appointed by the court to perform certain designated duties, the court appointing the attorney shall, after the services of the attorney have been performed and the disbursements incurred, fix the amount of his compensation for the services and provide for the repayment of disbursements in such sum as the court shall deem proper, and which compensation shall be such as is customarily charged by attorneys in this state for comparable services.

256.52 Guardian ad litem for persons not in being or unascertainable. In any action or proceeding, except as provided in ch. 52, the court may appoint a guardian ad litem for persons not in being or presently unascertainable, if the court has reason to believe that such appointment is necessary to protect the interests of such persons.

History: Sup. Ct. Order, 50 W (2d) vii.

Cross Reference: Compare 701.15 concerning guardians in trust matters.

Comment of Judicial Council, 1971: Guardian ad litem for unborn child. (Clarification) [Re Order effective July 1, 1971]

256.55 Reporting testimony. (1) Except as provided otherwise in this section, all testimony in all courts of record in every action or proceeding, contested, uncontested or ex parte, shall be reported.

(2) Proceedings had on forfeitures of bail or deposit, pleas of guilty in ordinance violation cases, and pleas of guilty in misdemeanor cases need not be reported except when the maximum penalty may exceed $500 or 6 months, but the clerk shall keep a record indicating the calling of the case, nonappearance or plea made by the defendant and action taken by the court.

(3) Voir dire examinations in any civil or criminal action need not be reported unless ordered by the court. Opening statements and closing arguments shall be reported in any action upon request of a party or upon order of the court. A request to report opening or closing argument shall be made on the record before any such argument has commenced.

(4) Arguments of counsel on motions made during the course of trial shall be reported, but such arguments on motions made before or after trial need not be reported except upon order of the court.

(5) A record shall be made of the court's advice and defendant's reply under s. 970.02 (1) (b).

(6) Preliminary examinations shall be reported.

(7) The reporter shall be readily available during all sessions of court to take any proceedings the court directs.

Lack of due process is not shown where the trial judge failed to order, sua sponte, the reporting of the voir dire. State v. Clarke, 49 W (2d) 161, 181 NW (2d) 355.

Trial court did not abuse discretion in denying motion for a new trial based upon prosecutor's argument to jury where neither counsel requested reporting under (3) and attempted reconstructions of statement were subject to various interpretations. Smith v. State, 65 W (2d) 51, 221 NW (2d) 687.

256.56 Reporters' notes. The original notes of all court reporters, made in open court or pursuant to an order of the court, constitute part of the records of the court in which made and are not the property of the reporter.

256.57 Transcripts. (1) Reporters' notes need not be transcribed unless required by this section, any other statute, or by court order.

(2) In any criminal action or proceeding the court may, and in case of sentence of any person to the state prisons or to a county house of correction for more than 6 months, the court shall order a transcript of the testimony and proceedings to be made and certified by the reporter and filed with the clerk of court, and a certified duplicate of such transcript to be filed with the warden or superintendent of the institution to which the person is committed. The cost of such transcript, at the rate of 50 cents per 25-line page for the original and 15 cents per 25-

line page for the duplicate, shall be paid for by the county treasurer upon the certificate of the clerk of court. In case of application for a pardon or commutation of sentence such duplicate transcript shall accompany the application.

(3) In any action in which the court orders a compulsory reference the court may direct the reporter thereof to attend the referee's hearing, report the testimony and proceedings and furnish a typewritten transcript thereof to the referee. For such transcripts the reporter shall be entitled to receive fees at the rates and paid in the manner provided in sub. (2).

(4) Testimony and proceedings under chs. 48 and 247 shall be transcribed only upon order of the court, except as otherwise provided by statute.

(5) Except as provided in sub. (4), every reporter, upon the request of any party to an action or proceedings, shall make a typewritten transcript, and as many copies thereof as such party requests, of the testimony and proceedings reported by him in such action or proceeding, or any part thereof specified by such party, the transcript and each copy thereof to be duly certified by him to be a correct transcript thereof. For such transcripts the reporter shall be entitled to receive fees from the party requesting the same, at the rate of 60 cents per 25-line page for the original and 20 cents per 25-line page for each copy; but when such request is by the state or any political subdivision thereof, the fees of the reporter shall be at the rates provided in sub. (2).

(6) A judge may also order the reporter to transcribe and file all or any part of the testimony and proceedings in any action or proceeding in the court of which he is the judge.

(7) A reporter may make a special charge, pursuant to arrangement with the party requesting the same, for furnishing typewritten transcripts of testimony and proceedings from day to day during the progress of any trial or proceeding.

(8) For purposes of this section a page other than the final page of a transcript shall consist of any 25 or more consecutive typewritten lines, double-spaced, on paper not less than 8 1/2 inches in width, with a margin of not more than 1 1/2 inches on the left and five-eighths of an inch on the right, exclusive of lines disclosing page numbering; type shall be standard pica with 10 letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall be not more than 15 spaces from left margin.

256.58 Transfer of cases between circuit and county court. (1) If an action is brought in the circuit court over which the county court has jurisdiction under ch. 299, the court on its own motion may transfer the action, together with a record of all the proceedings had therein, to the county court.

(2) Except as provided in sub. (3) when it appears that an action pending in the county court will be tried by a 12-man jury, the county court may, by order transfer the action to the circuit court of said county, and the clerk shall transfer the file thereof to the circuit court.

(3) In counties having a population of 200,000 or more, actions commenced in county court may be transferred to circuit court, and actions commenced in circuit court may be transferred to county court, jurisdiction permitting, whenever the county board of judges so determines. When such transfer occurs, adjustment for suit tax paid to the state treasury shall be as stated in ss. 59.20 (11), 59.395 (5) and 814.21.

History: Sup. Ct. Order, 67 W (2d) 775.

A specific demand for a jury trial need not be made before a case is transferred to circuit court where the court understood that a jury was wanted and defendant did not object. Dolan v. State, 48 W (2d) 696, 180 NW (2d) 623.

256.65 Indigent defendants; payment of costs. In all cases involving indigent defendants the county shall be liable for the costs arising from the trial of such case only to the extent of an amount determined by multiplying the population of the county by $.50, or $10,000, whichever is lesser. The state shall be liable for any additional costs and shall reimburse the county out of the appropriation provided by s. 20.625 (2). Upon completion of the trial and compilation of the costs of a case, the clerk of court shall file with the administrative director of the courts the county claim for reimbursement of court costs which shall include the following items:

(1) Costs of preliminary hearing.

(2) Court expenses prior to trial.

(3) Jurors.

(4) Bailiffs.

(5) Witnesses, expert witnesses and medical expenses.

(6) Extra help in office of clerk of courts, and supplies.

(7) State crime laboratory charges.

(8) Attorney fees.

(9) Meals, lodging and mileage for attorneys.

(10) Transcript fees.

(11) Total costs to sheriff's department of prisoner's expenses and other items.

(12) Any other expenses related to the case.

History: 1973 c. 90.

256.66 Recovery of legal fees paid for indigent defendants. Whenever a county has paid for legal representation of an indigent

defendant and the county board so requires the clerk of the court wherein representation for the indigent was appointed shall prepare, sign and file in the office of the register of deeds, in a record book there to be kept for the purpose, a certificate stating the name and residence of the indigent beneficiary, the amount paid by the county for his legal representation, the date when paid, the court and county in which his case was heard and such other information as the county board directs. When a claim is so filed within 6 months after payment is made by the county it may, any time within 10 years after such filing, commence an action to recover from the indigent defendant, or his estate if the action is commenced within the time set for filing claims by creditors, the amount paid by the county for his legal representation. In any such action the 10-year statute of limitations and s. 859.01, so far as applicable, may be pleaded in defense. Such claim shall not take precedence over the allowances in ss. 861.31, 861.33 and 861.35. It is the duty of the district attorney to commence and prosecute all actions and proceedings necessary under this section to make such recovery when it appears that the indigent defendant or his estate is able to pay the claim.

History: 1971 c. 40 s. 93.

Recovery of legal defense fees from indigent defendants discussed. James v. Strange, 407 US 128.

256.67 Testimony of judge of kin to attorney. No judge of any court of record shall testify as to any matter of opinion in any action or proceeding in which any person related to such judge in the first degree shall be an attorney of record.

History: Sup. Ct. Order, 59 W (2d) R4.

256.68 Judicial court commissioners in populous counties. (1) OFFICE CREATED; QUALIFICATIONS, APPOINTMENT. In counties having a population of 500,000 or more, there is created in the classified service the office of judicial court commissioner. The county board shall establish the number of positions and set the salary for the office. The chairman of the county board of judges shall be the appointing power and shall assign and supervise the work of such commissioners who shall be members of the bar residing in such county. Each judicial court commissioner shall take and file the official oath before performing any duty of the office.

(2) DUTIES. Judicial court commissioners shall, by virtue of their respective positions and to the extent required for their duties, have the powers of a court commissioner. The chairman of the county board of judges shall assign judicial court commissioners to the various branches of circuit and county court to assist the judges in the performance of their judicial duties and facilitate the work of the courts and the office of family court commissioner under s. 247.13 (2) whenever needed and requested by him. In addition to the duties assigned under s. 247.13 (2), assistant family court commissioners shall be assigned the work and duties of judicial court commissioners by the chairman of the county board of judges whenever necessary to assist and facilitate judicial performance within other branches of county and circuit court.

(3) ASSIGNMENT AND FUNCTION. (a) When assigned to children's court a judicial court commissioner may, under ch. 48, issue summonses and warrants, order the release or detention of children apprehended, conduct detention and shelter care hearings, conduct preliminary appearances and impose informal disposition. Waiver hearings under s. 48.18 and dispositional hearings under ss. 48.33 to 48.35 shall be conducted by a children's court judge. When acting in his official capacity and assigned to the children's court center, a judicial court commissioner shall sit at the children's court center or such other facility designated by the chairman of the county board of judges. Any determination, order or ruling by the commissioner may be certified to the branch of children's court to whom such case has been assigned upon a motion of any party for a hearing de novo.

(b) When assigned to a branch of county court assigned misdemeanor or traffic cases, a judicial court commissioner may conduct such hearings and proceedings in misdemeanor and traffic cases as authorized by the judge of the branch to which assigned but the commissioner shall not preside over any trial, except that default judgments and stipulations may be entered and approved by the commissioner. In addition the judicial court commissioner shall perform the following duties when directed to do so by the presiding judge:

1. Inform the defendant of his rights under the United States and Wisconsin constitutions when necessary.

2. If the defendant does not waive his right to counsel, refer the matter of the appointment of an attorney, if the defendant is indigent, to the public or legal defenders when the defendant is willing to accept these services or otherwise to the judge for appointment of private counsel.

3. If the defendant wishes to enter a plea, with intelligent waiver of rights, direct the case to a designated court for trial in this division.

4. If a not guilty plea is entered, adjourn the case to a day certain for trial in a designated branch of court.

5. Set bail on a schedule established by the judges and a procedure agreed to by the judges

with the right of immediate judicial hearing, if requested.

6. Dispose of cases which have been found to have no merit from the complaint or on motion of the district or city attorney.

7. Issue warrants and capiases for those who do not appear as summoned.

(c) When assigned to other branches of circuit or county court, a judicial court commissioner may be authorized by the presiding judge to engage in conciliation and pretrial work. In addition, the commissioner may hear all applications for mental examinations under s. 51.20 (1); appoint counsel for the person alleged to be mentally ill if indigent; advise the person of rights under the United States and Wisconsin constitutions; and determine probable cause for further detention at the preliminary hearing to determine any mental condition.

History: 1973 c. 278; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 199; 1975 c. 430 s. 80.