

## CHAPTER 757

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

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**757.01 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.

History: 1977 c. 187 s. 96.

**757.02 Justices and judges and municipal judges; oath of office; ineligibility to other office; salary; conservators of peace.**

(1) Every person elected or appointed justice of the supreme court, judge of the court of appeals, judge of the circuit court or municipal judge, 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 or she 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.

(5) Except for retired judges appointed under ss. 753.075 and 754.195, each supreme court justice, circuit court judge, county court judge and circuit and county court reporter included under chs. 40 and 41 shall accrue sick leave at the rate established under s. 230.35 (2) for the purpose of credits under s. 230.35 (2m) and for premium payment determinations under ss. 40.146 and 40.16 (3).

**History:** 1977 c. 187 s. 96; 1977 c. 305 s. 64; 1977 c. 418, 449.

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 un-sanctioned 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.

### 757.025 Judge to file affidavit as to work done to receive salary.

(1) No judge of a court of record may receive or be allowed to draw any salary, unless he or she first executes an affidavit stating that no cause or matter which has been submitted in final form to his or her court remains undecided that has been submitted for decision for 90 days, exclusive of the time that he or she has been actually disabled by sickness or unless extended by the judge 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), the judge shall so certify in the record and the period is thereupon extended for one additional period of not to exceed 90 days.

**History:** 1977 c. 187 s. 96.

**757.03 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; 1977 c. 187 s. 96

**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.

Criminal and civil contempt discussed. State v. King, 82 W (2d) 124, 262 NW (2d) 80.

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

### 757.04 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; 1977 c. 187 s. 96.

See note to Art. I, sec. 7, citing *Codispoti v. Pennsylvania*, 418 US 506.

See note to Art. I, sec. 8, citing *United States v. Wilson*, 421 US 309.

**757.05 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; 1977 c. 187 s. 96.

**757.06 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. 757.04 (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. 757.04 (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; 1977 c. 187 ss. 96, 135.

**757.07 Criminal prosecution for contempt.** Persons found in contempt under s. 757.03 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. 757.06.

**History:** 1975 c. 401; 1977 c. 187 ss. 96, 135.

**757.08 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.

**History:** 1977 c. 187 s. 96.

**757.10 Failure to adjourn.** No omission to adjourn any such court may vitiate any proceedings in the court.

**History:** 1977 c. 187 s. 96; 1977 c. 449.

**757.12 Adjournment to another place.**

Whenever it is 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 court. All proceedings in the court may be continued at adjourned times and places and be of the same force and effect as if the court had continued its sessions at the place it was held before the adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the appointment, and shall be published as a class I notice, under ch. 985, or in such other manner as is required in the order.

**History:** 1977 c. 187 s. 96; 1977 c. 449.

**757.13 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.

**History:** 1977 c. 187 s. 96.

**757.14 Sittings, public.** The sittings of every court shall be public and every citizen may freely attend the same, except if 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 exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses.

**History:** 1977 c. 187 s. 96.

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

#### 757.15 Holding court, effect of holidays.

No court may be opened or transact business on the first day of the week, July 4 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 does not prevent the exercise of the jurisdiction of any judge when it is necessary, in criminal cases, to preserve the peace or arrest offenders. Whenever a legal holiday, other than July 4 or Christmas, occurs, the court may proceed with its business thereon in like manner and with like effect as upon any other day.

**History:** 1975 c. 159; 1977 c. 54; 1977 c. 187 s. 96; 1977 c. 449

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

#### 757.16 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; 1977 c. 187 s. 96.

**757.17 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; 1977 c. 187 s. 96.

**757.171 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; 1977 c. 187 s. 96.

**757.175 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.

**History:** 1977 c. 187 s. 96.

**757.18 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.

**History:** 1977 c. 187 s. 96

**757.19 Disqualification of judge. (1)** In this section, "judge" includes the supreme court justices, court of appeals judges, circuit court judges and municipal judges.

**(2)** Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs:

(a) When a judge is related to any party or counsel thereto or their spouses within the 3rd degree of kinship.

(b) When a judge is a party or a material witness.

(c) When a judge previously acted as counsel to any party in the same action or proceeding.

(d) When a judge prepared as counsel any legal instrument or paper whose validity or construction is at issue.

(e) When a judge of an appellate court previously handled the action or proceeding while judge of an inferior court.

(f) When a judge has a significant financial or personal interest in the outcome of the matter. Such interest does not occur solely by the judge being a member of a political or taxing body that is a party.

(g) When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.

**(3)** Any disqualification that may occur under sub. (2) may be waived by agreement of all parties and the judge after full and complete disclosure on the record of the factors creating such disqualification.

**(4)** Any disqualification under sub. (2) in a civil or criminal action or proceeding must occur, unless waived under sub. (3), when the factors creating such disqualification first become known to the judge.

**(5)** When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 251.182.

**(6)** In addition to other remedies, an alleged violation under this section or abuse of the disqualification procedure shall be referred to the judicial commission of the supreme court.

**History:** 1977 c. 135; 1977 c. 187 s. 96; 1977 c. 447, 449.

**Judicial Council Note, 1977:** Section 256.19 [757.19] has been repealed and recreated to more comprehensively set out the procedure in Wisconsin for a judge to disqualify himself

or herself. The new provisions apply to courts of record and municipal courts and define those situations in which a judge should in the interest of justice disqualify himself or herself from hearing a matter. Subsection (2) (g) is a catch-all provision to be used in those situations where a particular set of circumstances dictates that a judge disqualify himself or herself.

The new judge disqualification section contains provisions for assuring that a disqualification is timely made and also provides for waiver of a statutory disqualification upon agreement of all interested parties and the judge. Alleged violations of this section will be brought to the attention of the judicial commission for appropriate review. [Bill 74-S]

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.

**757.22 Judge not to act as attorney, etc.; attorneys not to have office with judge. (1)**

No judge, while holding office, may be in any manner engaged or act as attorney or counsel; and no judge or his or her clerk or any person employed by the judge in or about his or her office, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any matter or action pending before the judge or officer, or which the judge has reason to believe will be brought before him or her 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 may 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 may hold office in the office of the clerk of any court in which he or she practices nor may he or she hold office in the same room with a judge.

**(3)** No practicing attorney may have his or her office in the same room with any district attorney, municipal judge or court commissioner, unless he or she is a partner of the district attorney, municipal judge or court commissioner, in which case he or she shall not practice as an attorney before the municipal judge or court commissioner nor act as attorney in any case in which it is the duty of the 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 may act as a municipal judge 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 the district attorney to prosecute or appear for the state.

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

**History:** 1977 c. 187 s. 96; 1977 c. 305 ss. 52, 64.

Under (1), a judge may not draft or prepare legal papers even on a gratuitous basis. In re Van Susteren, 82 W (2d) 307, 262 NW (2d) 133.

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

**757.23 Court commissioner, when disqualified.** A court commissioner, or any judge acting as a court commissioner, shall not act or take part in the decision of, or make any order in any matter or proceeding in which he or she is a party, or in which his or her rights would be in any manner affected by his or her decision or order thereon, or in which he or she is interested, or in which his or her law partner, or any person connected with him or her 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 a court commissioner, violating this section shall forfeit \$25 for each violation, and shall also be subject to removal from office.

**History:** 1977 c. 187 s. 96.

**757.24 Liability of judicial officers.** Circuit judges 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 if the motions are made in accordance with law or such rules as are promulgated by the supreme court.

**History:** 1977 c. 187 s. 96; 1977 c. 449.

**757.25 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.

**History:** 1977 c. 187 s. 96.

**757.26 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. No attorney or counselor may be exempt from arrest during the sitting of a court of which he or she is an officer unless he or she is employed in some case pending and then to be heard in the court.

**History:** 1977 c. 187 s. 96.

**757.27 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 the person in any court except felony actions, or may prosecute or defend the action or proceeding 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 may be made without consent signed by the party and his or her attorney; or for cause shown and upon such terms as shall be just, and on such notice as the court or judge shall direct.

**History:** 1977 c. 187 s. 96.

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.

**757.28 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 the person's 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 par. (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 the justice and filed with the clerk of the court.

(b) To be admitted on the diploma privilege, every applicant must present to the clerk of the supreme court his or her diploma and a certificate of the law school at which he or she completed 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 the 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 or her 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.** 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 or her 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 attorneys professional competence, be admitted to practice law in this state by the supreme court, and when the court is not in session, by one of the justices, by an order signed by a justice and filed with the clerk of the court. A certificate shall be given by the board of attorneys professional competence to every person who successfully passes an examination given by the board of attorneys professional competence 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.** (a) Every person 21 years of age or over and of good moral character who is a U.S. citizen and a resident of this state and who has 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 the person's written application therefor, a certificate of the person's admission to practice law by a court of last resort in the other state or territory or the District of Columbia and satisfactory proof that he or she is a U.S. citizen and a resident of this state, is of good moral character, and has been engaged in actual practice in the 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 the application, exclusive in each case of time spent in the armed forces. The certificate of the judge of any court of record in the other state or territory or the District of Columbia or court of the United States, before whom the applicant has practiced, under the seal of the court, may be deemed sufficient proof of the practice in the state or territory or the District of Columbia or court of the United States.

(b) Applications by attorneys for admission to the bar under this section, together with supporting proofs, must be filed with the clerk. Each applicant shall, at the time of filing the application, deposit with the clerk the sum of \$200 or other amount as may be required for the investigation as may be necessary to satisfy the court that the applicant is of good moral character and has been engaged in the actual practice of the law in the state or territory from which the applicant comes for the required period. Applications shall be in the form prescribed by the court.

**(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; Sup. Ct. Order, 74 W (2d) ix; 1977 c. 187 ss. 91, 96; Sup. Ct. Order, 81 W (2d) xxxv; 1977 c. 272.

**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.

**757.281 Board of attorneys professional competence. (1) COMPOSITION.** The board of attorneys professional competence consists of 9 members appointed by the supreme court for 3 year terms. The terms of the members are to be staggered so that the terms of 3 members expire each year. A member may not serve more than 2 successive 3 year terms. Five members must be members of the state bar of Wisconsin, who shall maintain their principal offices within this state. Four members must be selected from the judiciary of this state, the faculty of the law schools of this state, and the public. The state bar of Wisconsin may recommend persons for appointment to the board. A board member is entitled to be reimbursed for expenses in connection with membership on the board.

**(2) DUTIES.** The board of attorneys professional competence is charged with the examination of applicants for admission to the bar under s. 757.28 (2) and such other duties as may be assigned to it by the supreme 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 requirements 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; Sup. Ct. Order, 74 W (2d) ix; 1977 c. 187 ss. 96, 135; Sup. Ct. Order, 81 W (2d) ix.

**757.282 Bar examination.** The bar examination shall be administered by the board of attorneys professional competence and shall consist of questions on the subject matter of the courses set forth in s. 757.28 (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 \$110 shall be paid to the board by each applicant before taking any examination.

**History:** Sup. Ct. Order, 48 W (2d) vii; Sup. Ct. Order, 74 W (2d) ix; 1977 c. 187 ss. 96, 135; Sup. Ct. Order, 81 W (2d) xxxv.

**757.285 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, 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 or her conviction. The 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; Sup. Ct. Order, 74 W (2d) ix; 1977 c. 187 s. 96.



**757.287 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 disbarment or suspension, make all arrangements for the permanent or temporary closing of his or her office, as the case may be, or of the winding up of his or her 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 suspension, or if he or she is not available or able, for any other reason, to deliver or assist in the delivery of his or her 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 the 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 or her 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 the 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 or she 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 or her either on a salary or a percentage or a fee-splitting basis, except that he or she may share attorney's fees on a quantum meruit basis only for services performed prior to disbarment or suspension,

and based solely on the value to the lawyer of the services performed prior to disbarment or suspension. 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; 1977 c. 187 s. 96.

**757.29 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 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 the attorney's office, or to remunerate police officers, 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 or her professional services; or to violate the disciplinary rules of the American bar association code of professional responsibility, as adopted by the supreme court. This subsection does not prohibit the advertising of legal services as permitted under s. 757.296.

**(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; 1977 c. 187 s. 96; 1977 c. 357, 447.

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.

Attorney's personality disorder, as distinguished from psychosis, is no defense to professional misconduct charge nor is it cause for medical suspension. State v. Ledvina, 71 W (2d) 195, 237 NW (2d) 683.

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

**757.293 Trust accounts required.** (1) A member of the state bar shall not commingle the money or other property of a client with his or her own, and he or she shall promptly report to the client the receipt by him or her of all money and other property belonging to the 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 or she shall promptly deposit his or her client's funds in a bank or trust company or savings and loan association, authorized to do business in this state, in a bank account separate from his or her own account and clearly designated as "Clients' Funds Account" or "Trust Funds Account", or words of similar import. The attorney, with the written consent of the client, may deposit the client's funds in a segregated client's trust account with all interest accruing thereon to the client. 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 this state, 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 or her which are required to be distributed or segregated by sub. (1). The records shall include his or her trust fund check-books and the stubs thereof, bank statements of the account, vouchers and canceled checks thereon and his or her account books showing dates, amounts and ownership of all deposits to and withdrawals by check or otherwise from the accounts, and all of the records shall be deemed to have public aspects as related to such member's fitness to practice law. Upon request of the board of attorneys professional responsibility, or upon direction of the supreme court, the 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. The records, or an audit thereof, must be produced at any disciplinary proceeding involving the attorney wherever material. Failure to produce the records shall constitute unprofessional conduct and grounds for disciplinary action.

**(3)** A member of the state bar of Wisconsin shall file with the state bar annually, with payment of the member's state bar dues or upon such other date as approved by the supreme court, a certificate stating whether the member is engaged in the private practice of law in Wisconsin and, if so, the name of each bank, trust company, or savings and loan association in which the member maintains a trust account, safe deposit box, or both, as required by this section. A partnership or professional legal corporation may file one certificate on behalf of its partners, associates, or officers who are required to file under this section. The failure of a member to file the certificate required by this section is grounds for automatic suspension of the member's membership in the state bar in the same manner as provided in section 6 of rule 2 of the Rules of the State Bar of Wisconsin for nonpayment of dues. The filing of a false certificate is unprofessional conduct and is grounds for disciplinary action. The state bar shall supply to each member, with the annual dues statement or at such other time as directed by the supreme court, a form on which the

certification must be made and a copy of this section.

**History:** Sup. Ct. Order, 48 W (2d) vii; Sup. Ct. Order, 74 W (2d) ix, xvii; 1977 c. 187 s. 96; 1977 c. 272.

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.

**757.294 Group or prepaid legal services plans. (1)** A "group or prepaid legal services plan" means a plan by which legal services are rendered to a person participating in the plan by an attorney recommended or selected as provided in the plan.

**(2)** An attorney may furnish legal services in this state pursuant to a group or prepaid legal services plan which complies with the following conditions:

(a) The plan must be written and provide:

1. The benefits to be provided, including all exclusions and conditions;
2. Procedures for the review and resolution of disputes arising under the plan;
3. That a person participating in the plan may obtain legal services independently of the plan;
4. That an attorney furnishing legal services under the plan is free to exercise an independent professional judgment and shall not engage in any misconduct as defined by the rules governing discipline of attorneys;
5. That the sponsoring organization or any person or entity connected with it shall not directly or indirectly derive a profit from or retain any part of the consideration paid for the rendering of legal services except those amounts utilized to: a. improve the benefits of the plan; b. reimburse the plan for its reasonable and necessary administrative expenses; or c. refund surpluses to the participants in the plan.

(b) A description of the terms of the plan must be given to each participant.

**(3)** An attorney shall not engage in misconduct as defined by the rules governing discipline of attorneys in the development or administration of a group or prepaid legal services plan.

**(4)** (a) An attorney furnishing legal services pursuant to a plan shall:

1. Advise the state bar within 60 days after the initial service is rendered. The state bar may require the attorney to submit information concerning the plan.
2. On or before January 31 of each year report to the state bar on forms provided by it a summary of the plan operation or the attorney's participation in it, including but not limited to all relevant fee schedules, the number of persons receiving legal services, and the kinds of benefits

provided.

(b) An attorney or sponsoring organization of a proposed plan shall file the plan with the state bar before the plan becomes operative and may inform interested persons that the plan has been registered with the state bar.

**(5)** All information filed pursuant to this section is confidential except the name of the plan, the name and address of its sponsoring organization, the fact that it has an arrangement for the provision of legal services, and the names of the attorneys providing the services. All reports are available to authorized representatives of the supreme court and the state bar for information purposes and for disciplinary and ethical investigations or proceedings.

**(6)** Failure by an attorney to file a timely report required by this section constitutes misconduct and is grounds for disciplinary action under the rules governing discipline of attorneys.

**(7)** The board of governors of the state bar of Wisconsin shall adopt guidelines and procedures for the administration of this section after consultation with representatives of sponsoring organizations and participants. The guidelines and procedures are effective upon approval by the supreme court.

**History:** Sup. Ct. Order, 55 W (2d) xi; Sup. Ct. Order, 77 W (2d) ix; Sup. Ct. Order, 79 W (2d) xi; 1977 c. 187 s. 96.

**757.295 Barratry. (1) SOLICITING LEGAL BUSINESS.** Except as provided under s. 757.296, no person may 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.** Except as provided under s. 757.296, no person may communicate directly or indirectly with any attorney or person acting in the attorney's behalf for the purpose of aiding, assisting or abetting the 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.** Except as provided under s. 757.296, no attorney may 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.

**History:** 1977 c. 187 s. 96; 1977 c. 273, 357; 1977 c. 447 ss. 190, 210.

**757.296 Advertisement of legal services.**

(1) Notwithstanding any other law, any attorney may advertise in a manner that is not false and misleading information relating to his or her professional qualifications, fees customarily charged for an initial consultation, the availability of fee estimates for specific services and fees regularly charged for nonvariable services.

(2) In this section:

(a) "Professional qualifications" means: name, including name of law firm and names of professional associates; addresses and telephone numbers; fields of law in which the lawyer or law firm concentrates; a statement that practice is limited to one or more fields of law; date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation; degrees and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions, memberships, offices, committee assignments and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references and, with their consent, names of clients regularly represented; whether credit cards or other credit arrangements are accepted; and office and other hours of availability.

(b) "Nonvariable services" means services for which a fee can be objectively determined prior to the time the services are rendered.

History: 1977 c. 357, 447.

**757.30 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 in this state, as provided by law, practices law within the meaning of sub. (2), or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

(2) Every person who appears 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 otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders 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 uses the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his or her 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 the person to be authorized to practice law or who in any other manner represents himself or herself either verbally or in writing, directly or indirectly, as authorized to practice law in this state, shall be deemed to be purporting to be 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 originally admitted to the bar of this or any other state, in any instance in which the board of attorneys professional competence 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 sub. (1). This subsection does not apply to a change of name resulting from marriage or divorce.

History: 1977 c. 26; 1977 c. 187 s. 96.

See note to Art. I, sec. 3, citing *Hopper v. Madison*, 79 W (2d) 120, 256 NW (2d) 139.

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.

Drafting of articles of incorporation constitutes the practice of law within meaning of (2). 65 Atty Gen. 173.

Sub. (2) is inapplicable to practice in federal courts. *United States v. Peterson*, 550 F (2d) 379.

**757.32 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 such person as a judge or justice.

History: 1977 c. 187 s. 96; 1977 c. 273.

**757.34 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 judge.

History: 1977 c. 187 s. 96; 1977 c. 305 s. 64.

**757.35 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.

History: 1977 c. 187 s. 96.

**757.36 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 action and give the attorney a lien upon the cause of action and upon the proceeds or damages derived in any action brought for the enforcement of the cause of action, as security for fees in the conduct of the litigation; when such agreement is made and notice thereof given to the opposite party or his or her attorney, no settlement or adjustment of the action may be valid as against the lien so created, provided the agreement for fees is fair and reasonable. This section shall not be construed as changing the law in respect to champertous contracts.

History: 1977 c. 187 s. 96.

**757.37 When action settled by parties, what proof to enforce lien.** If any such cause of action is settled by the parties thereto after judgment has been procured without notice to the attorney claiming the lien, the lien may be enforced and it shall only be required to prove the facts of the agreement by which the lien was given, notice to the opposite party or his or her 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 the lien to prove the agreement creating the same, notice to the opposite party or his or her attorney and the amount for which the case was settled, which shall be the basis for the lien and it shall not be necessary to prove up the original cause of action in order to enforce the lien and suit.

History: 1977 c. 187 s. 96.

**757.38 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.

History: 1977 c. 187 s. 96.

**757.39 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.

History: 1977 c. 187 s. 96.

**757.40 Law library.** Any circuit judge may, whenever he or she deems it desirable, purchase or direct the clerk of the circuit court for any county in his or her 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 or her circuit, provided the cost of the 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 the county authorizes the expenditure of a larger sum. Whenever the purchase or subscription is made the clerk shall have each volume of books received stamped or branded with the name of the county and take charge of the same for the use of the courts, judges, attorneys and officers thereof. The cost of the volumes shall be paid by the county treasurer upon the presentation to him or her of the accounts therefor, certified to by the clerk of the circuit court and the circuit judge.

History: 1977 c. 187 s. 96.

**757.41 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. 757.40 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. 757.40. 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; 1977 c. 187 ss. 96, 135.

**757.45 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.

History: 1977 c. 187 s. 96.

**757.46 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 or her assistants may 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 this section shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation of this section. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section.

History: 1977 c. 187 s. 96.

**757.47 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.

History: 1977 c. 187 s. 96.

**757.48 Guardian ad litem must be an attorney. (1)** Except as provided in s. 879.23 (4), 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 the 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, the attorney shall be entitled only to attorney fees and shall receive no compensation for 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 may be permitted to receive any money or property of his or her ward, nor may any bond be required of a guardian ad litem, but all money or property of his or her ward may be paid or delivered to a general guardian of his or her 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; 1977 c. 187 s. 96; 1977 c. 299, 447.

**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]

**757.49 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 or her compensation for the services and provide for the repayment of disbursements in such sum as the court deems proper, and which compensation shall be such as is customarily charged by attorneys in this state for comparable services.

**History:** 1977 c. 187 s. 96.

**757.52 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; 1977 c. 187 s. 96.

**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]

**757.55 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.

**History:** 1977 c. 187 s. 96.

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.

**757.56 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.

**History:** 1977 c. 187 s. 96.

**757.57 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 the party requests, of the testimony and proceedings reported by him or her in the action or proceeding, or any part thereof specified by the party, the transcript and each copy thereof to be duly certified by him or her to be a correct transcript thereof. For the transcripts the reporter shall be entitled to receive fees from the party requesting the transcripts, at the rate of 60 cents per 25-line page for the original and 20 cents per 25-line page for each copy. If 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 or she 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.

History: 1977 c. 187 s. 96.

#### 757.60 Judicial administrative districts.

The state is divided into judicial administrative districts for the purpose of administering the court system. Each district includes all the circuit courts within the district. The judicial administrative districts are as follows:

(1) The 1st district consists of Milwaukee county.

(2) The 2nd district consists of Kenosha, Racine and Walworth counties.

(3) The 3rd district consists of Jefferson, Ozaukee, Washington and Waukesha counties.

(4) The 4th district consists of Calumet, Fond du Lac, Manitowoc, Sheboygan and Winnebago counties.

(5) The 5th district consists of Dane, Green and Rock counties.

(6) The 6th district consists of Adams, Columbia, Dodge, Green Lake, Juneau, Marquette, Portage, Sauk, Waupaca, Waushara and Wood counties.

(7) The 7th district consists of Buffalo, Crawford, Grant, Iowa, Jackson, La Crosse, Lafayette, Monroe, Pepin, Richland, Trempealeau and Vernon counties.

(8) The 8th district consists of Brown, Door, Kewaunee, Marinette, Oconto and Outagamie counties.

(9) The 9th district consists of Ashland, Clark, Florence, Forest, Iron, Langlade, Lincoln, Marathon, Menominee, Oneida, Price, Shawano, Taylor and Vilas counties.

(10) The 10th district consists of Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Pierce, Polk, Rusk, St. Croix, Sawyer and Washburn counties.

History: 1977 c. 449; Sup. Ct. Order, 84 W (2d) xxv.

NOTE: This section, as created by chapter 449, laws of 1977, was adopted by supreme court order filed July 21, 1978, effective August 1, 1978.

#### 757.61 Selection of chief judges of judicial administrative districts.

The supreme court shall appoint a chief judge in each judicial administrative district. The chief judge shall be a circuit judge within the district. The chief judge is responsible for the administration of judicial business in circuit courts within the district, including its personnel and fiscal management.

History: 1977 c. 449; Sup. Ct. Order, 84 W (2d) xxv.

NOTE: This section, as created by chapter 449, laws of 1977, was adopted by supreme court order filed July 21, 1978, effective August 1, 1978.

#### 757.63 Responsibilities and duties of the chief judge.

(1) The chief judge is the administrative chief of the judicial administrative district, including the elected, appointed and assigned circuit judges. The general responsibility of the chief judge is to supervise and direct the administration of the district.

(2) In carrying out administrative duties, the chief judge shall cooperate with the state administrator of courts.

(3) In the exercise of general responsibility, the chief judge has the following duties:

(a) Assignment of judges within each judicial administrative district. The chief judge shall establish a system for the equitable distribution and allocation of categories of cases and caseloads within the district, subject to the approval of the supreme court.



(b) Maintenance of a system for and effective management of caseload through the judicial administrative district.

(c) Establishment of hours for court operation.

(d) Appointment of court committees.

(e) Establishment of policies, plans and rules, as authorized by rule of the supreme court.

(f) Provision for representation of the circuit court in ceremonial functions and in its relations with other branches of the government or with other courts and with news media.

(g) Calling and presiding over meetings of the circuit judges within the district.

(h) Supervision of vacation schedules.

(i) Coordination of attendance by judges and other court personnel at conferences which require absence from the court during working hours.

(j) Supervision of court finances including financial planning, the preparation of budgets and fiscal reporting.

History: 1977 c. 449; Sup. Ct. Order, 84 W (2d) xxv.

NOTE: This section, as created by chapter 449, laws of 1977, was adopted by supreme court order filed July 21, 1978, effective August 1, 1978.

**757.64 Authority of the chief judge.** The chief judge shall exercise within the judicial administrative district the full administrative power of the judicial branch of government subject to the administrative control of the supreme court. The chief judge may order that his or her directives, policies and rules be carried out. Failure to comply with an order of the chief judge is grounds for discipline under ss. 757.81 to 757.99.

History: 1977 c. 449; Sup. Ct. Order, 84 W (2d) xxv.

NOTE: This section, as created by chapter 449, laws of 1977, was adopted by supreme court order filed July 21, 1978, effective August 1, 1978.

**757.641 Rule (Term of office of chief judge).** The chief judge of each judicial administrative district shall serve for a term of 2 years commencing August 1 of the year of appointment. The supreme court shall fill vacancies as they occur for the balance of the terms. No chief judge may serve during more than 3 successive terms of office. A chief judge shall be subject to removal by the supreme court.

History: Sup. Ct. Order, 84 W (2d) xxv.

**757.642 Rule (Deputy chief judge).** The chief judge of each judicial administrative district shall select a deputy chief judge to serve under the chief judge. The deputy chief judge shall serve at the pleasure of the chief judge. The deputy chief judge shall provide assistance

to the chief judge in administrative areas requiring participation by a judicial officer. The deputy chief judge's duties and authority shall be those delegated by the chief judge, including acting for the chief judge in his or her absence, and representing the chief judge at official functions or in dealings with other agencies.

History: Sup. Ct. Order, 84 W (2d) xxv.

**757.643 Rule (Division presiding judge).**

If a judicial administrative district is subdivided into functional multi-judge units, the chief judge may select a division presiding judge to administer each such subunit, subject to the supervision of the chief judge. The division presiding judge shall serve at the pleasure of the chief judge. The division presiding judge shall serve as the administrative head of a separate multi-judge division of the court. The division presiding judge shall act as the supervisor of that particular subdivision of the judicial administrative district. The division presiding judge shall administer his subdivision of the judicial administrative district in accordance with policies established by the chief judge.

History: Sup. Ct. Order, 84 W (2d) xxv.

**757.644 Rule (Chief judge expenses).**

The administrative director of courts shall approve the expenditure of state funds to defray the actual and necessary expenses, reasonable in amount, incurred by the chief judge in the performance of the chief judge's duties. Provision shall be made for such administrative or secretarial assistance as may be required. Federal grant moneys shall be used if appropriate. The 1st and 10th judicial administrative districts each have a district court administrator.

History: Sup. Ct. Order, 84 W (2d) xxv.

**757.645 Rule (Assignment of circuit judges).** (1) Assignments of judges, active or reserve, to serve temporarily in any circuit court or branch thereof shall be made by the chief justice for such purposes and period as the chief justice may determine, except for assignments by the chief judge as provided in ss. 757.60 to 757.64.

(2) Chief judges of judicial administrative districts have the authority within their respective districts to fulfill all responsibilities and perform all duties as chief judge pursuant to ss. 757.60 to 757.646, including allocation of judicial workload, assignment of judges, transfer of cases, scheduling of vacations and absences to attend judicial education programs and judicial conferences, so as to expedite the business of all branches of court within such judicial administrative districts. In the 1st and the 10th judicial administrative districts, the chief judge will be

assisted in fulfillment of responsibilities and performance of duties by a district court administrator who shall act under the authority and direction of the chief judge. When the chief judge deems it necessary, the chief judge shall call upon the administrative director of courts for assignment of an outside or reserve judge.

(3) An active judge who is going to be absent from court shall obtain approval of the chief judge of the judicial administrative district and the chief judge may assign an active judge of such judicial administrative district to substitute for the absenting judge. The chief judge of a judicial administrative district may also assign an active judge of such judicial administrative district to relieve congestion, to expedite disposition of litigation or to assist in any branch of the circuit court of such judicial administrative district. The chief judge shall make an order accordingly. If no active judge of the district is available for such service the chief judge shall call upon the administrative director of courts to assign a judge from outside the judicial administrative district or a reserve judge.

(4) In case of disqualification, whether because of a request for substitution, other mandatory disqualification or self-disqualification, the judge shall cause the clerk of courts or register in probate of his circuit to promptly notify the chief judge or district court administrator, as directed by the chief judge; another judge shall be promptly assigned to preside in such a case by the chief judge or district court administrator, as directed by the chief judge who may direct assignment of judges by lot under a tab system. The self-disqualification of a judge is subject to approval of the chief judge. Under such circumstances, the chief judge shall provide for the assignment of another judge from within the judicial administrative district, except that where the chief judge deems it necessary the chief judge shall call upon the administrative director of courts to assign a judge from outside the judicial administrative district or a reserve judge.

(5) Whenever a judge is appointed by the chief justice or chief judge or deputy chief judge under ss. 757.60 to 757.646 to serve in any court or branch thereof or to hear a case, he shall do so and shall have all the authority necessary for that purpose. Whenever the term "chief justice" is used in ss. 757.60 to 757.646, it includes an associate justice designated by the supreme court for that purpose and it includes the administrative director of courts when acting within the director's authorization as the agent of the chief justice or of such designated associate justice. Whenever the term "chief judge" is

used, it includes a deputy chief judge acting in the capacity of a chief judge.

History: Sup. Ct. Order, 84 W (2d) xxv.

**757.646 Rule (Assignment of municipal judges).** In a case in which a municipal judge is disqualified under s. 757.19 or in which a request for substitution has been filed under s. 300.05 or 345.315, the municipal judge shall promptly notify the chief judge of the judicial administrative district in which the municipal court is located. The chief judge shall promptly transfer the case to another municipal judge in the same county, or, if none is available, to circuit court.

History: Sup. Ct. Order, 84 W (2d) xxv.

**757.65 Indigent defendants; payment of costs.** In all trials involving indigent defendants the county shall be liable for the costs specified in subs. (1) to (4) arising from the trial or retrial of the case only to the extent of an amount determined by multiplying the population of the county by 50 cents, or \$10,000, whichever is lesser. The costs of a retrial shall not be added to the costs of the original trial when calculating total county trial costs of the case. The state shall be liable for additional costs specified in subs. (1) to (4) 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) Meals, lodging, mileage and fees for jurors.

(2) Fees for transcripts requested by the prosecuting or defense attorney.

(3) Meals, lodging, mileage and fees for a defense attorney if counsel was appointed by the court prior to the implementation of the state public defender program for determination of indigency and appointment of counsel in the county.

(4) Witnesses, expert witnesses and medical expenses.

History: 1973 c. 90; 1977 c. 29; 1977 c. 187 s. 96; 1977 c. 418 ss. 750, 750m.

**757.66 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 where 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 or her legal representation, the date when paid, the court and county in which the 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 the filing, commence an action to recover from the indigent defendant, or his or her estate if the action is commenced within the time set for filing claims by creditors, the amount paid by the county for his or her 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. The claim shall not take precedence over the allowances in ss. 861.31, 861.33 and 861.35. The district attorney shall commence and prosecute all actions and proceedings necessary under this section to make the recovery when it appears that the indigent defendant or his or her estate is able to pay the claim.

**History:** 1971 c. 40 s. 93; 1977 c. 187 s. 96.

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

**757.67 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; 1977 c. 187 s. 96.

**757.68 Court commissioners. (1) APPOINTMENT IN POPULOUS COUNTIES.** (a) Except as provided in par. (b), in counties having a population of 100,000 or more, there may be created the office of full-time court commissioner. The county board shall establish the number of positions and set the salary for the office. Any person qualified and acting as a judicial court commissioner on August 1, 1978 shall be deemed a full-time court commissioner and shall continue in the classified county civil service but any new appointee shall be in the unclassified (exempt) civil service. The chief judge shall be the appointing and supervising authority and may terminate the employment of any such commissioner if cause is proven. Such full-time court commissioners shall be attorneys licensed to practice in this state. Each court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.

**NOTE:** Par. (a) is shown as renumbered and amended by Chapter 345, laws of 1977, effective August 1, 1977. An earlier amendment by Chapter 323, laws of 1977, is not shown. See the Preface section 6 (c) for the printing rule followed.

(b) In counties having a population of 500,000 or more, the county board shall establish at least one full-time court commissioner position under par. (a) to assist in the administration of the procedures for small claims type actions under ch. 299. In counties having a population of 100,000 or more but less than 500,000, the county board may establish one or more part-time or full-time court commissioner positions under par. (a) to assist in the administration of small claims type actions under ch. 299. Any court commissioner appointed under this paragraph shall be an attorney licensed to practice in this state.

**(2) PART-TIME COURT COMMISSIONERS.** In each county the circuit judges shall appoint such number of part-time court commissioners as the proper transaction of business requires subject to the following exception: in counties having a population of 200,000 or more each judge may appoint not more than 2 such commissioners and in counties having a population of less than 200,000 each judge shall, as nearly as possible, appoint an equal number of commissioners within the county. In all counties the appointments shall be subject to the approval of a majority of the circuit judges for the county. Appointments shall be in writing and shall be filed in the office of the clerk of the circuit court. All court commissioners appointed after May 16, 1978, other than official court reporters acting under s. 757.71 (2) (b) performing duties or exercising powers specified for court reporters, shall be attorneys licensed to practice in this state. The appointing judge may remove, at will and without cause, any court commissioner appointed by the judge or the judge's predecessor in office. Unless he or she is so removed, the term of each court commissioner shall continue until the expiration of the term of the appointing judge and until the successor of the commissioner is appointed and qualified. Each court commissioner shall take and file the official oath in the office of clerk of the circuit court of the county for which appointed before performing any duty of the office.

**(3) CONCILIATORS.** In all counties, retired circuit judges appointed to act as conciliators pursuant to s. 807.09 may be appointed court commissioners, in addition to those appointed under sub. (1). The term of court commissioners appointed to act as conciliators under s. 807.09 shall continue until a successor is appointed and qualifies.

**(4) ELIGIBILITY OF FORMER INFERIOR COURT JUDGES.** Any former judge of an inferior court of record of this state shall be eligible to appointment as a court commissioner, by any judge

authorized by this section to make such appointment, in addition to those specified in sub. (1).

**History:** 1973 c. 278; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 199; 1975 c. 430 s. 80; 1977 c. 187 s. 96; 1977 c. 323 ss. 7, 11; 1977 c. 345; 1977 c. 418 ss. 751, 752; 1977 c. 447 ss. 192 to 195; 1977 c. 449.

**757.69 Powers and duties of court commissioners. (1)** On authority delegated by a judge, which may be by a standard order, and with the approval of the chief judge of the judicial administrative district, a court commissioner appointed under s. 757.68 may:

(a) Direct a case to the proper court if the defendant wishes to enter a plea after intelligent waiver of rights.

(b) In criminal matters issue summonses, arrest warrants or search warrants and conduct initial appearances of persons arrested and set bail to the same extent as a judge. At the initial appearance, the court commissioner shall when necessary inform the defendant in accordance with s. 970.02 (1). If the defendant appears or claims to be unable to afford counsel, the court commissioner may refer the person to the state public defender for an indigency determination and appointment of counsel under ch. 977.

(c) Conduct initial appearances in all traffic cases, in traffic regulation cases receive noncontested forfeiture pleas and impose monetary penalties according to a schedule adopted by a majority of the judges of the courts of record within the county, and refer applicable cases to court for enforcement for nonpayment.

(d) In small claims type actions, conduct initial return appearance and conciliation conferences.

(e) Conduct noncontested probate proceedings.

(f) Issue warrants and capias for those who do not appear as summoned.

(g) When assigned to the court assigned jurisdiction under ch. 48, a 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 enter into consent decrees. Waiver hearings under s. 48.18 and dispositional hearings under ss. 48.33 to 48.35 shall be conducted by a judge. When acting in an official capacity and assigned to the children's court center, a court commissioner shall sit at the children's court center or such other facility designated by the chief judge. Any decision by the commissioner shall be reviewed by the judge of the branch of court to which the case has been assigned, upon motion of any party. Any determination, order or ruling by the commissioner may be certified to the

branch of court to which such case has been assigned upon a motion of any party for a hearing de novo.

(h) Hear petitions for commitment and conduct probable cause hearings under ss. 51.20 and 51.45, advise a person alleged to be mentally ill of his or her rights under the United States and Wisconsin constitutions and refer such persons, if they claim or appear to be unable to afford counsel, to the state public defender for an indigency determination and appointment of counsel under ch. 977.

**(2)** A judge may refer to a court commissioner appointed under s. 757.68 cases in which:

(a) The trial of an issue of fact requires the examination of an account, in which case the court commissioner may be directed to report upon any specific question of fact involved therein.

(b) The taking of an account is necessary for the information of the court before judgment or for carrying a judgment or order into effect.

(c) A question of fact other than upon the pleadings arises.

(d) Proposed findings of fact and conclusions of law are to be prepared pertaining to default mortgage and land contract foreclosures and mechanics liens.

**(3)** Court commissioners appointed under s. 757.68 may under their own authority:

(a) Officiate at a marriage ceremony.

(b) Issue subpoenas and attachments or other process to compel the attendance of witnesses, administer oaths and affidavits, take depositions and testimony when authorized by law or rule or order, and certify and report the depositions and testimony.

(c) Issue the following writs returnable before a judge at a time set by the judge or the judge's clerk: habeas corpus; certiorari; ne exeat and alternative writs of mandamus.

(d) Supervise accountings subsequent to a forced tax sale of land.

(e) Issue subpoenas returnable before a judge on behalf of the Wisconsin department of justice for antitrust violations under s. 133.06 (1) or bingo control act violations under s. 163.71 (1).

(f) Investigate and dispose of unclaimed property under ss. 171.04 to 171.06.

(g) Conduct a paternity proceeding according to the procedures set out in ch. 52 whenever a court commissioner is specifically authorized to do so.

(h) Conduct supplementary hearings on the present financial status of a debtor.

(i) Take and certify acknowledgments.

(4) In addition to the duties expressly set forth in sub. (3) (a) to (c), a court commissioner may perform other ministerial duties as required by a court.

(5) A court commissioner may transfer to a court any matter in which it appears that justice would be better served by such a transfer.

(6) Every judge of a court of record has the powers and duties of a court commissioner.

(7) A court commissioner shall refer to a court of record for appropriate action every alleged showing of contempt in the carrying out of the lawful decisions of the commissioner.

History: 1977 c. 323, 449.

Judicial court commissioner is not authorized to conduct preliminary examination in felony case. State ex rel. Perry v. Wolke, 71 W (2d) 100, 237 NW (2d) 678.

**757.695 Court commissioners; small claims matters.** If a court commissioner has been appointed under s. 757.68 (1) (b) to assist in the administration of small claims matters, the commissioner shall conduct the hearings and proceedings as prescribed by ch. 299 and shall have the following additional duties and authority:

(1) Grant and enter default judgments and approve stipulations.

(2) Conduct conferences and hearings with the parties or their attorneys or both on the return dates and adjourned dates, if any.

(3) Issue decisions in matters that come before the commissioner. The decisions shall become judgments under s. 299.207 (2).

History: 1977 c. 345.

**757.70 Hearings before court commissioners.** (1) All proceedings and hearings before a court commissioner shall be public and open to every citizen, except juvenile proceedings or when it is necessary for the court in which the action or proceeding is pending to impose by order restrictions under its inherent power to conduct proceedings in camera.

(2) All hearings before a court commissioner shall be held in the county courthouse or other court facilities provided by law. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.69 (3) (h) or depositions taken before a court commissioner.

History: 1977 c. 323.

**757.71 Court commissioners; fees.** (1) Any public employe retirement system to which the state or any political subdivision of the state has contributed on behalf of a person for service as a court commissioner shall temporarily suspend any annuity payments being made to the person during the time the person is serving as a

court commissioner, and any annuity payments which are affected by this subsection shall be permanently forfeited without any right to payment at a later date. Annuity payments which have been temporarily suspended under this subsection shall be reinstated after a person ceases to serve as a court commissioner. The homerule provisions for the retirement system created by chapter 201, laws of 1937, as established by chapter 405, laws of 1965, do not apply to this subsection.

(2) Part-time court commissioners appointed under s. 757.68 (2) shall be entitled to the following fees:

(a) A fee of \$1 for each decision, signing or filing of a document or other ministerial act required by law performed by a part-time court commissioner. This fee provision does not apply to testimonial proceedings or depositions taken before a court commissioner.

(b) For the following duties performed by a part-time court commissioner held in the county courthouse or other court facilities provided by law, reasonable compensation as fixed by the court but not more than the hourly equivalent of the salary of a judge of the court:

1. Every attendance upon the hearing of any motion for an order which a court commissioner is authorized to grant and for attendance upon any motion or an official act to be done by the court commissioner.

2. Conducting a hearing and deciding on the issuance of a writ of habeas corpus; certiorari; ne exeat, and alternate writs of mandamus.

3. Attendance upon the taking of testimony or examination of witnesses in any matter held outside the county courthouse or other court facilities provided by law, whether acting as a referee or otherwise.

History: 1977 c. 323.

**757.72 Office of probate court commissioner.** (1) In counties having a population of 500,000 or more, there is created in the classified civil service the office of probate court commissioner. In counties having a population of at least 100,000 but not more than 500,000, the county board may create the office of probate court commissioner which may be in the classified civil service.

(2) Judges assigned probate jurisdiction may assign to the probate court commissioners any matters over which the judges have jurisdiction, and the probate court commissioners may determine such matters and may sign any order or certificate required in such determination.

(3) Probate court commissioners shall receive such salary and be furnished with quarters, necessary office furnishings and supplies as determined by the county board.

(4) In counties having a population of 500,000 or more the chief judge of the judicial administrative district shall appoint and may remove probate court commissioners under ss. 63.01 to 63.17. In counties having a population of at least 100,000 but not more than 500,000 the chief judge shall appoint and may remove any probate court commissioner if cause is proven. Probate court commissioners shall be attorneys licensed to practice in this state.

(5) The register in probate of a county shall have the duties and powers of a probate court commissioner and shall act in that capacity when designated to do so by a judge assigned probate jurisdiction.

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

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

(8) The probate court commissioners may administer oaths, take depositions and testimony, and certify and report the depositions and testimony, take and certify acknowledgments, allow accounts and fix the amount and approve the sufficiency of bonds.

History: 1977 c. 323, 449.

**757.81 Definitions.** In ss. 757.81 to 757.99:

(1) "Commission" means the judicial commission created by s. 757.83.

(2) "Disability" means permanent disability or temporary disability.

(3) "Judge" means a judge of any court established by or pursuant to article VII, section 2 or 14, of the constitution, or a supreme court justice.

(4) "Misconduct" includes any of the following:

(a) Wilful violation of a rule of the code of judicial ethics.

(b) Wilful or persistent failure to perform official duties.

(c) Habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties.

(d) Conviction of a felony.

(5) "Panel" means a judicial conduct and disability panel constituted under s. 757.87.

(6) "Permanent disability" means a physical or mental incapacity which impairs the ability of a judge to substantially perform the duties of his or her judicial office and which is or is likely to be of a permanent or continuing nature.

(7) "Temporary disability", in the case of a municipal court judge or a judge of a court of record other than the supreme court, means a physical or mental incapacity which impairs the ability of the judge to substantially perform the duties of his or her judicial office and which exists or is likely to exist for a period of one year or less. In the case of a supreme court justice, temporary disability means a physical or mental incapacity which impairs the ability of the justice to substantially perform the duties of his or her judicial office and which exists or is likely to exist for a period of 6 months or less.

History: 1977 c. 449.

**757.83 Judicial commission. (1) MEMBERSHIP; APPOINTMENT; TERMS.** (a) There is created a judicial commission of 9 members: 5 nonlawyers nominated by the governor and appointed with the advice and consent of the senate; one trial judge of a court of record and one court of appeals judge appointed by the supreme court; and 2 members of the state bar of Wisconsin, who are not judges, appointed by the supreme court. The commission shall elect one of its members as chairperson.

(b) The term of a member is 3 years, but a member shall not serve more than 2 consecutive full terms. A vacancy is filled by the appointing authority for the unexpired term. Members of the commission shall receive no compensation, but shall be reimbursed for expenses necessarily incurred as members of the commission.

(2) **QUORUM; VOTING.** A majority of the commission constitutes a quorum. The commission may issue a formal complaint or a petition only upon a finding of probable cause by a majority of the total membership not disqualified from voting. A member must be present to vote on the question of probable cause. A member shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

(3) **RULES.** (a) *Authority of judicial commission.* The commission shall promulgate rules under ch. 227 for its proceedings. This subsection does not apply to emergency rules adopted under s. 227.027.

(b) *Role of legislative council.* Prior to any public hearing on a proposed rule under this section, or if no public hearing is required, prior to notification of the standing committees, the commission shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the commission and the revisor to:

1. Review the statutory authority under which the commission intends to adopt the rule.

The legislative council shall notify the commission, the joint committee for the review of administrative rules and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

2. Ensure that the procedures for the promulgation of a rule required by this subsection and ch. 227 are followed.

3. Review proposed rules for form, style and placement in the administrative code.

4. Review proposed rules to avoid conflict with or duplication of existing rules.

5. Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

6. Streamline and simplify the rule-making process.

7. Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

8. Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

(c) *Legislative council to assist standing committees.* The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the commission submits under this section.

(d) *Notification of standing committees.* The commission shall notify appropriate standing committees when proposed rules under this section are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The commission may withdraw a proposed rule by notifying the presiding officer in each house of the legislature of its intention not to promulgate the rule.

(e) *Form of notice.* The notice shall include the proposed rule in a form complying with s. 227.024 (1).

(f) *Standing committee review.* 1. A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the commission to attend the meeting and hold public hearings to review the proposed rule.

2. The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the commission to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

3. The commission may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

4. Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the commission may promulgate the rule.

(g) *Joint committee for the review of administrative rules.* 1. If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

2. The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

3. The commission may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of administrative rules or until the bill in subd. 5 fails of enactment. The commission may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

4. The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee may remand the proposed rule to the commission for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the commission may not promulgate the proposed rule until the bill in subd. 5 fails of enactment.

5. When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

*History:* 1977 c. 449

**757.85 Investigation; prosecution. (1)**  
The commission shall investigate any possible

misconduct or disability of a judge or justice. Misconduct constitutes cause under article VII, section 11 of the constitution.

(2) The commission may issue subpoenas to compel the attendance and testimony of witnesses and to command the production of books, papers, documents or tangible things designated in the subpoena in connection with an investigation under this section.

(3) The commission may notify a judge that the commission is investigating possible misconduct by or disability of the judge. Before finding probable cause, the commission shall notify the judge of the substance of the complaint or petition and afford the judge a reasonable opportunity to respond. If the judge responds, the commission shall consider the response before it finds probable cause.

(4) The commission may require a judge who is under investigation for disability to submit to a medical examination arranged by the commission.

(5) The commission shall upon a finding of probable cause that a judge has engaged or is engaging in misconduct, file a formal complaint with the supreme court. Upon a finding of probable cause that a judge has a disability, the commission shall file a petition with the supreme court. If the commission requests a jury under s. 757.87 (1), the request shall be attached to the formal complaint or the petition.

(6) The commission shall prosecute any case of misconduct or disability in which it files a formal complaint or a petition.

(7) Insofar as practicable, the procedures applicable to civil actions apply to proceedings under ss. 757.81 to 757.99 after the filing of a complaint or petition.

History: 1977 c. 449.

**757.87 Request for jury; panel.** (1) After the commission has found probable cause that a judge has engaged in misconduct or has a disability, and before the commission files a formal complaint or a petition under s. 757.85 (5), the commission may, by a majority of its total membership not disqualified from voting, request a jury hearing. If a jury is not requested, the matter shall be heard by a panel constituted under sub. (3). The vote of each member on the question of a jury request shall be recorded and shall be available for public inspection under s. 19.21 after the formal complaint or the petition is filed.

(2) If a jury is requested under sub. (1), the hearing under s. 757.89 shall be before a jury selected under s. 805.08. A jury shall consist of 6 persons, unless the commission specifies a greater number, not to exceed 12. Five-sixths of

the jurors must agree on all questions which must be answered to arrive at a verdict. A court of appeals judge shall be selected by the chief judge of the court of appeals to preside at the hearing, on the basis of experience as a trial judge and length of service on the court of appeals.

(3) A judicial conduct and disability panel shall consist of 3 court of appeals judges. Each judge shall be from a different court of appeals district. The chief judge of the court of appeals shall select the judges according to seniority based on length of service as a court of appeals judge and designate which shall be presiding judge. If 2 or more court of appeals judges have identical seniority, the chief judge shall choose which judge or judges shall sit on the panel.

History: 1977 c. 449.

**757.89 Hearing.** A record shall be kept of any hearing on a formal complaint or a petition. The allegations of the complaint or petition must be proven to a reasonable certainty by evidence that is clear, satisfactory and convincing. The hearing shall be held in the county where the judge resides unless the presiding judge changes venue for cause shown or unless the parties otherwise agree. If the hearing is by a panel, the panel shall make findings of fact, conclusions of law and recommendations regarding appropriate discipline for misconduct or appropriate action for disability and file the findings, conclusions and recommendations with the supreme court. If a jury hearing is requested under s. 757.87 (1), the presiding judge shall instruct the jury regarding the law applicable to judicial misconduct or disability, as appropriate. The presiding judge shall file the jury verdict and his or her recommendations regarding appropriate discipline for misconduct or appropriate action for disability with the supreme court.

History: 1977 c. 449.

**757.91 Supreme court; disposition.** The supreme court shall review the findings of fact, conclusions of law and recommendations under s. 757.89 and determine appropriate discipline in cases of misconduct and appropriate action in cases of disability. The rules of the supreme court applicable to civil cases in the supreme court govern the review proceedings under this section.

History: 1977 c. 449.

**757.93 Confidentiality of proceedings.**

(1) All proceedings under ss. 757.81 to 757.99 relating to misconduct or disability prior to the filing of a petition or formal complaint by the commission are confidential unless a judge



waives the right to confidentiality in writing to the commission.

**(2)** If prior to the filing of a formal complaint or a petition an investigation of possible misconduct or disability becomes known to the public, the commission may issue statements in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudice, to state that the judge denies the allegations or to state that an investigation has been completed and no probable cause was found.

**(3)** The petition or formal complaint filed under s. 757.85 by the commission and all subsequent hearings thereon are public.

**History:** 1977 c. 449.

**757.94 Privilege; immunity.** **(1)** A complaint or communication alleging judicial misconduct or disability with the commission, commission staff or panel and testimony in an investigation under this section is privileged.

**(2)** A presiding judge or a member of the commission, commission staff or panel is immune from civil liability for any conduct in the course of the person's official duties under ss. 757.81 to 757.99.

**History:** 1977 c. 449.

**757.95 Temporary suspension by supreme court.** The supreme court may, following the filing of a formal complaint or a petition by the commission, prohibit a judge

from exercising the powers of a judge pending final determination of the proceedings.

**History:** 1977 c. 449.

**757.97 Temporary vacancies.** **(1)** If the supreme court determines that a judge has a temporary disability, a temporary vacancy exists.

**(2)** When a temporary vacancy exists in the office of a judge of a court of record other than the supreme court, the chief justice shall appoint, pursuant to article VII, section 24 of the constitution, a reserve judge to assume the duties of the office.

**(3)** When a temporary vacancy exists, the incumbent judge continues to receive the salary and other benefits to which entitled for the balance of his or her term or until the temporary vacancy terminates, whichever first occurs. The person appointed to serve temporarily shall be reimbursed for the period of temporary service under s. 20.625 or 20.660, whichever is applicable, as specified in s. 753.075 (3).

**History:** 1977 c. 449.

**757.99 Attorney fees.** A judge against whom a petition alleging disability is filed by the commission shall be reimbursed for reasonable attorney fees if the judge is found not to have a disability. A judge against whom a formal complaint alleging misconduct is filed by the commission and who is found not to have engaged in misconduct may be reimbursed for reasonable attorney fees.

**History:** 1977 c. 449.