

CHAPTER 814

COURT COSTS AND FEES

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SUBCHAPTER I

COSTS IN CIVIL ACTIONS AND SPECIAL PROCEEDINGS

814.01 Costs allowed to plaintiff. (1) Except as otherwise provided in this chapter, costs shall be allowed of course to the plaintiff upon a recovery.

(3) In an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, invasion of privacy or seduction, a plaintiff who recovers less than \$50 damages shall recover no more costs than damages.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.01; 1981 c. 317.

This section does not provide for the awarding of costs to a party in an arbitration proceeding. This section requires a litigated court proceeding. *Finkenbinder v. State Farm Mutual Insurance Co.* 215 Wis. 2d 145, 572 N.W.2d 501 (Ct. App. 1997).

814.02 Costs limited, discretionary. (1) When several actions are brought against parties who might have been joined as defendants and the actions are consolidated under s. 805.05 (1) no costs, other than disbursements, shall be allowed to the plaintiff in excess of what the plaintiff would be entitled to had the plaintiff brought but one action.

(2) In equitable actions and special proceedings costs may be allowed or not to any party, in whole or in part, in the discretion of the court, and in any such case the court may award to the successful party such costs (exclusive of disbursements) not exceeding \$100, as the court deems reasonable and just, in view of the nature of the case and the work involved. This subsection refers only to such costs and fees as may be taxed by the authority of the statutes, independent of any contract of the parties upon the subject, which contract shall apply unless the court finds that the provisions thereof are inequitable or unjust.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.02; 1993 a. 486.

Courts can make a determination of the reasonableness of attorney fees even when a note specifies the amount. *Lakeshore Commercial Finance Corp. v. Bradford Arms Corp.* 45 Wis. 2d 313, 173 N.W.2d 165 (1970).

Neither s. 814.02 or 814.036 grants the trial court the power to allow costs that are not explicitly authorized by statute. *Kleinke v. Farmers Coop. Supply & Shipping*, 202 Wis. 2d 138, 549 N.W.2d 714 (1996).

The court exercises its discretion under this section by determining what is a necessary cost. *Aspen Services, Inc. v. IT Corp.* 220 Wis. 2d 491, 583 N.W.2d 849 (Ct. App. 1998).

814.025 Costs upon frivolous claims and counterclaims. (1) If an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense or cross complaint commenced, used or continued by a defendant is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs determined under s. 814.04 and reasonable attorney fees.

(2) The costs and fees awarded under sub. (1) may be assessed fully against either the party bringing the action, special proceeding, cross complaint, defense or counterclaim or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) In order to find an action, special proceeding, counterclaim, defense or cross complaint to be frivolous under sub. (1), the court must find one or more of the following:

(a) The action, special proceeding, counterclaim, defense or cross complaint was commenced, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense or cross complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

(4) To the extent s. 802.05 is applicable and differs from this section, s. 802.05 applies.

History: 1977 c. 209; 1987 a. 256.

The trial court's finding that a claim was not frivolous was against the great weight and clear preponderance of evidence. *Sommer v. Carr*, 95 Wis. 2d 651, 291 N.W.2d 301 (Ct. App. 1980).

This section is not applicable in quasi-criminal actions, such as ordinance violation prosecutions, in which the decision to proceed is based on prosecutorial discretion. *City of Janesville v. Wiskia*, 97 Wis. 2d 473, 293 N.W.2d 522 (1980).

The trial court must apply an objective test to support a finding that a claim is frivolous. *Sommer v. Carr*, 99 Wis. 2d 789, 299 N.W.2d 856 (1981).

This section does not permit an award of attorney fees for a frivolous appeal. The determination of frivolousness is discussed. In *Matter of Estate of Bilsie*, 100 Wis. 2d 342, 302 N.W.2d 508 (Ct. App. 1981).

A court may not impose joint and several liability under this section. Frivolousness is discussed. *State v. State Farm Fire & Casualty Co.* 100 Wis. 2d 582, 302 N.W.2d 827 (1981).

A court commissioner lacked jurisdiction over a counterclaim alleging a frivolous action. As such, the commissioner's order finding that the claim was not frivolous was void. *Hessenius v. Schmidt*, 102 Wis. 2d 697, 307 N.W.2d 232 (1981).

A motion for relief from judgment under s. 806.07 is a special proceeding subject to this section and was properly found frivolous on affidavits without a hearing. The court erred by allowing travel expenses as costs. *Wengerd v. Rinehart*, 114 Wis. 2d 575, 338 N.W.2d 861 (Ct. App. 1983).

Arguments that "reduction clauses" in uninsured motorist provisions are invalid and that a release does not bar a subsequent claim against an insurer for the tort of bad faith were frivolous. *Radlein v. Industrial Fire & Casualty Insurance Co.* 117 Wis. 2d 605, 345 N.W.2d 874 (1984).

The denial of a defendant's motion for a directed verdict did not bar the court from finding the plaintiff's action to be frivolous. Courts may find some claims constituting an action frivolous and others not frivolous. *Stoll v. Adriansen*, 122 Wis. 2d 503, 362 N.W.2d 182 (Ct. App. 1984).

A court may award attorney fees if a petitioner's claim is frivolously brought before it on review under ch. 227, but may not award attorney fees incurred at various agency levels. *Tatum v. LIRC*, 132 Wis. 2d 411, 392 N.W.2d 840 (Ct. App. 1986).

This section penalizes parties who bring frivolous lawsuits and does not penalize parties for unacceptable tactics in the course of proceedings. *Gagnow v. Haase*, 149 Wis. 2d 542, 439 N.W.2d 593 (Ct. App. 1989).

The trial court erred in finding frivolousness on an attorney's part based upon the court's assessment of the credibility of the attorney's client. *Blankenship v. Computers & Training*, 158 Wis. 2d 702, 462 N.W.2d 918 (Ct. App. 1990).

Restricting access to courts may be a sanction for a frivolous action if the order is narrowly tailored to balance the interests of public access to the courts, res judicata, and the public's right to not have frivolous litigation be a drain on public resources. *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 468 N.W.2d 760 (Ct. App. 1991).

In cases that do not fit squarely within this statute, a trial court has certain inherent powers to sanction parties, including the awarding of attorney fees. *Schaefer v. Northern Assurance Co.* 182 Wis. 2d 148, 513 N.W.2d 16 (Ct. App. 1994).

Frivolousness under sub. (3) (a) is a high standard typically requiring a finding of bad faith based on some statement or action, such as a threat. The threshold issue under sub. (3) (b) is whether the action may even be brought. If an attorney knows or should have known that the required elements necessary to prove a claim cannot be produced, the claim is frivolous under sub. (3) (b). *Stern v. Thompson & Coates, LTD.* 185 Wis. 2d 221, 517 N.W.2d 658 (1994).

The application of this section is not limited to frivolous pleadings recognized in ch. 802, but includes any argument by counsel made during the course of a proceeding. *Gardner v. Gardner*, 190 Wis. 2d 216, 527 N.W.2d 701 (Ct. App. 1994).

Motions under this section must be filed prior to the entry of judgment. *Northwest Wholesale Lumber v. Anderson*, 191 Wis. 2d 278, 528 N.W.2d 502 (Ct. App. 1995).

There is a presumption requiring all doubts to be resolved against frivolousness. When frivolousness is disputed, the moving party has the burden to show at an evidentiary hearing that the action is not well grounded in the facts or the law or equity. *Kelly v. Clark*, 192 Wis. 2d 633, 531 N.W.2d 455 (Ct. App. 1995).

When a party's claim can only be determined after research and deliberation it is not frivolous. *Juneau County v. Courthouse Employees Local 1312, 216 Wis. 2d 283, 576 N.W.2d 565* (Ct. App. 1998).

The incorporation of s. 802.05 by this section allows the trial court, on a motion under this section, to award attorney fees based on both sections. *Belich v. Szymaszek*, 224 Wis. 2d 419, 592 N.W.2d 254 (Ct. App. 1999).

A plaintiff need not, as a matter of course, exhaust outside sources of information before embarking on formal discovery. However, a plaintiff may not rely on formal discovery to establish the factual basis of its cause of action, thereby escaping the mandates of ss. 802.05 and 814.025, when the required factual basis could be established without discovery. *Jandrt v. Jerome Foods, Inc.* 227 Wis. 2d 531, 597 N.W.2d 744 (1999).

An attorney who knows that his or her client is asserting a claim solely to injure or harass the opposing party, and still agrees to proceed with that claim, will be held to have the same motive as the client. *Elmakias v. Wayda*, 228 Wis. 2d 312, 596 N.W.2d 869 (Ct. App. 1999).

Despite the express service provisions in this section, service does not initiate the appeal and confer jurisdiction, filing does. *Carla B. v. Timothy N.* 228 Wis. 2d 695, 598 N.W.2d 924 (Ct. App. 1999).

As long as fees are sufficiently related to the action before the court, it is their reasonableness, and not the time they were incurred, that determines whether the court has authority to award them in its discretion. *Lenhardt v. Lenhardt*, 2000 WI App 201, 238 Wis. 2d 535, 618 N.W.2d 218.

The American Rule does not bar courts from exercising their inherent power to assess attorney fees, and when a court does so, the limitations of fee awards under s. 814.025 do not control. *Schultz v. Sykes*, 2001 WI App 255, 248 Wis. 2d 746, 638 N.W.2d 604.

Sub. (3) (b) encompasses claims that are frivolous because knowledge of the relevant facts that the party knew or should have known would lead a reasonable party or attorney to conclude that the claim is frivolous. The statute assumes and requires an adequate investigation of the facts and law. *Paulson v. Allstate Insurance Company*, 2002 WI App 168, ___ Wis. 2d ___, 649 N.W.2d 645.

A claim of intentional infliction of emotional distress was frivolous. *Braski v. AH-NE-PEE Dimensional Hardware, Inc.* 630 F. Supp. 862 (1986).

Is Wisconsin's frivolous claim statute frivolous? *Endress*, 68 MLR 279 (1985).

Awarding reasonable attorney fees upon frivolous claims and counterclaims under s. 814.025. *Sundby*, WBB May 1980.

The Effect of *Jandrt* on Satellite Litigation. *Geske & Gleisner*. Wis. Law. May 2000.

814.03 Costs to defendant. (1) If the plaintiff is not entitled to costs under s. 814.01 (1) or (3), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint.

(2) Where there are several defendants who are not united in interest and who make separate defenses by separate answers, if the plaintiff recovers against some but not all of such defendants, the court may award costs to any defendant who has judgment in the defendant's favor.

(3) Notwithstanding subs. (1) and (2), where the department of health and family services or a county is joined as a plaintiff pursuant to ss. 49.89 (2) and 803.03 (2) (a) because of the provision of benefits under subch. IV of ch. 49, the department of health and family services or the county shall not be liable for costs to any prevailing defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.03; 1987 a. 345; 1993 a. 486, 496; 1997 a. 27; 1999 a. 9.

This section contemplates the awarding of costs only to successful parties. *DeGroff v. Schmude*, 71 Wis. 2d 554, 238 N.W.2d 730 (1976).

A prevailing defendant is entitled to costs from all plaintiffs including subrogated plaintiffs who elected not to participate in the trial. *Sampson v. Logue*, 184 Wis. 2d 20, 515 N.W.2d 917 (Ct. App. 1994).

This section is mandatory, not discretionary. *Taylor v. St. Croix Chippewa Indians of Wisconsin*, 229 Wis. 2d 688, 599 N.W.2d 924 (Ct. App. 1999).

814.035 Costs upon counterclaims and cross complaints. (1) Except as otherwise provided in this section, costs shall be allowed on counterclaims and cross complaints as if separate actions had been brought thereon.

(2) When the causes of action stated in the complaint and counterclaim and cross complaint arose out of the same transaction or occurrence, costs in favor of the successful party upon the complaint and counterclaim and cross complaint so arising shall be in the discretion of the court.

(3) Costs recovered by opposing parties shall be offset.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.035.

An award of statutory costs to the lessee and denial of costs to the lessor was, under 271.035 [now 814.035] (2) and (3), a matter within the trial court's discretion. Costs are purely discretionary when both parties recover on their respective claims in one action. *Mid-Continent Refrigerator Co. v. Straka*, 47 Wis. 2d 739, 178 N.W.2d 28 (1970).

When judgment was ordered for a defendant in the plaintiff's action and also for the defendant on one of several counterclaims, costs were properly awarded to the defendant as to each. *Arrowhead Growers Sales Co. v. Central Sands Produce, Inc.* 48 Wis. 2d 383, 180 N.W.2d 567 (1970).

814.036 Omnibus costs provision. If a situation arises in which the allowance of costs is not covered by ss. 814.01 to 814.035, the allowance shall be in the discretion of the court.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.036.

A prevailing plaintiff in a habeas corpus proceeding may not be awarded costs. *State ex rel. Korne v. Wolke*, 79 Wis. 2d 22, 255 N.W.2d 446 (1977).

Circuit courts have authority to impose costs on an attorney whose actions have resulted in a mistrial. *Schulz v. Darlington Mutual Insurance Co.* 181 Wis. 2d 646, 511 N.W.2d 879 (1994).

Photocopy and facsimile expenses may be taxed under s. 814.036. *Wausau Medical Center v. Asplund*, 182 Wis. 2d 274, 514 N.W.2d 34 (Ct. App. 1994).

This section only gives a court discretion as to when it may allow costs and not as to what costs may be allowed. Neither s. 814.02 or s. 814.036 grants the trial court the power to allow costs that are not explicitly authorized by statute. *Kleinke v. Farmers Coop. Supply & Shipping*, 202 Wis. 2d 138, 549 N.W.2d 714 (1996).

An award of statutory costs after arbitration is not explicitly authorized by statute and is not within the court's discretion under this section. *Lane v. Williams*, 2000 WI App 263, 240 Wis. 2d 255, 621 N.W.2d 922.

Kleinke addressed what costs may be taxed when s. 814.036 or 814.04 are relied upon; it did not consider what costs may be recovered as a component of damages in a bad faith claim. As with attorney fees, a prevailing plaintiff may recover, as compensatory damages, all reasonable expenses incurred in litigating the bad faith claim. *Allied Processors, Inc. v. Western National Mutual Insurance Company*, 2001 WI App 129, 246 Wis. 2d 579, 629 N.W.2d 329.

814.04 Items of costs. Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

(1) ATTORNEY FEES. (a) When the amount recovered or the value of the property involved is \$1,000 or over, attorney fees shall be \$100; when it is less than \$1,000 and is \$500 or over, \$50;

when it is less than \$500 and is \$200 or over, \$25; and when it is less than \$200, \$15.

(b) When no money judgment is demanded and no specific property is involved, or where it is not practical to ascertain the money value of the rights involved, attorney fees under par. (a) shall be fixed by the court, but shall not be less than \$15 nor more than \$100.

(c) No attorney fees may be taxed on behalf of any party unless the party appears by an attorney other than himself or herself.

(2) **DISBURSEMENTS.** All the necessary disbursements and fees allowed by law; the compensation of referees; a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but the item may not exceed the authorized sheriff's fee for the same service; amounts actually paid out for certified copies of papers and records in any public office; postage, telegraphing, telephoning and express; depositions including copies; plats and photographs, not exceeding \$50 for each item; an expert witness fee not exceeding \$100 for each expert who testifies, exclusive of the standard witness fee and mileage which shall also be taxed for each expert; and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees shall not be taxed as a cost or disbursement.

(4) **INTEREST ON VERDICT.** Except as provided in s. 807.01 (4), if the judgment is for the recovery of money, interest at the rate of 12% per year from the time of verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs.

(6) **JUDGMENT BY DEFAULT.** If the judgment is by default or upon voluntary dismissal by the adverse party the costs taxed under sub. (1) shall be one-half what they would have been had the matter been contested.

(7) **JUDGMENT OFFER NOT ACCEPTED.** If the offer of judgment pursuant to s. 807.01 is not accepted and the plaintiff fails to recover a more favorable judgment the plaintiff shall not recover costs but the defendant shall have full costs to be computed on the demand of the complaint.

(8) **ACTIONS FOR MUNICIPAL CORPORATIONS.** In all actions brought for the benefit of any county, town, village, city or other municipal corporation of this state by a citizen taxpayer, the plaintiff shall be entitled to recover for the plaintiff's own use, in case the plaintiff shall prevail, the taxable costs of such action and such part of the recovery as the court considers reasonable, as attorney fees, not to exceed 20% of such recovery, and not to exceed \$500.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; 2001 a. 6, 16.

Comment of Judicial Council, 1971: Guardian ad litem fees shall not be taxed as a cost or disbursement. Present law permits guardian ad litem fees to be taxed as costs or disbursements. [Re Order effective July 1, 1971]

Fees for an expert witness may be taxed only for the day that the expert testifies, even though the expert was present in court on other days. *McLoone Metal Graphics, Inc. v. Robers Dredge, Inc.* 58 Wis. 2d 704, 207 N.W.2d 616 (1973).

A citizen who obtains an injunction in an action brought for the benefit of a municipality may not recover attorney fees under sub. (8). *Cobb v. Milwaukee County*, 60 Wis. 2d 99, 208 N.W.2d 848 (1973).

Sub. (4), being a general statute, does not govern the rate of interest on a jury verdict in a condemnation action, which is covered by ss. 32.05 (11) (b) and 138.04. *Weiland v. DOT*, 62 Wis. 2d 456, 215 N.W.2d 455 (1974). See also *Calaway v. Brown County*, 202 Wis. 2d 737, 553 N.W.2d 809 (Ct. App. 1996).

Sub. (2) allows the recovery of costs, not exceeding \$50, for each individual plat and photograph. *Billingsley v. Zickert*, 72 Wis. 2d 156, 240 N.W.2d 375 (1976).

When a plaintiff's damages were set by the first verdict, but the amount the plaintiff could recover was not set until the second verdict, the plaintiff was entitled to interest from the date of the first verdict. *Nelson v. Travelers Insurance Co.* 102 Wis. 2d 159, 306 N.W.2d 71 (1981).

The court erred by taxing as costs of suit, guardian ad litem and attorney fees as a surcharge or penalty against a former guardian. In *Matter of Guardianship & Estate of P.A.H.* 115 Wis. 2d 670, 340 N.W.2d 577 (Ct. App. 1983).

Photocopies may not be taxed as photographs. *Ramsey v. Ellis* 163 Wis. 2d 378, 471 N.W.2d 289 (Ct. App. 1991).

The award of attorney fees, disbursements, and interest on a verdict are discussed. *Zintek v. Perchik*, 163 Wis. 2d 439, 471 N.W.2d 522 (Ct. App. 1991).

Photocopy and facsimile expenses may be taxed under s. 814.036. *Wausau Medical Center v. Asplund*, 182 Wis. 2d 274, 514 N.W.2d 34 (Ct. App. 1994).

There is no authority for awarding pretrial mediation fees as taxable costs. *Kleinke v. Farmers Coop. Supply & Shipping*, 202 Wis. 2d 138, 549 N.W.2d 714 (1996).

Postverdict, prejudgment interest on a verdict that was overturned by a judgment notwithstanding the verdict, but was ultimately reinstated on appeal, accrued from the date of the original verdict to the entry of judgment following the completion of the appeal. *Management Computer v. Hawkins, Ash, Baptie & Co.* 224 Wis. 2d 312, 592 N.W.2d 279 (Ct. App. 1998).

When multiple plaintiffs are required to bring their claims in a single action pursuant to s. 803.03, sub. (2) does not authorize multiple awards for the same disbursement to multiple plaintiffs. *Paulson v. Allstate Insurance Company*, 2002 WI App 168, ___ Wis. 2d ___, 649 N.W.2d 645.

814.05 Bond premium as costs. Any party entitled to recover costs or disbursements in an action or special proceeding may include in such disbursements the lawful premium paid to an authorized insurer for a suretyship obligation.

History: 1977 c. 339.

Legislative Council Note, 1977: This provision is currently the 2nd sentence of s. 204.11. It has nothing to do with the law of insurance but deals solely with the proper taxing of costs in legal proceedings. As such it belongs in ch. 814 and is transferred there without change of meaning. The language is very slightly edited. [Bill 258-S]

814.07 Costs on motion. Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding \$50, and may be absolute or directed to abide the event of the action.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.07.

Motion costs on motions brought to open judgments entered on forfeiture actions under s. 345.37 may not be imposed by a blanket order. Discretion must be exercised by the court in each case. *OAG 1-00*.

814.08 Costs on appeal from municipal court; certiorari. (1) In actions appealed from municipal court, where there is no new trial, if the judgment is affirmed or the appeal dismissed the respondent shall have costs; if reversed, the appellant; if affirmed in part and reversed in part, the court may award the costs or such part thereof as is just to either party. In actions appealed by the defendant from municipal court, where there is no new trial, if the judgment finding the defendant guilty under s. 800.09 is affirmed, or if the defendant's appeal is dismissed, the defendant shall pay the full costs of the transcript prepared under s. 800.14 (5), minus the \$10 transcript payment under s. 814.65. Where there is a new trial, costs shall be awarded to the successful party; but if the appeal is from a judgment in favor of the appellant he or she shall have costs only if he or she obtains a more favorable judgment, and otherwise the respondent shall have costs. In all those cases full costs shall be the applicable fee under s. 814.61 (8) and all disbursements made for return of the judge and officers' and witnesses' fees, together with all costs taxable in the municipal court in the action.

(2) Upon certiorari to municipal court the same costs shall be awarded to the successful party as provided by sub. (1), where there is no new trial.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.08; 1977 c. 305; 1981 c. 317; 1987 a. 389.

814.10 Taxation of costs. (1) **CLERK'S DUTY, NOTICE, REVIEW.** The clerk of circuit court shall tax and insert in the judgment and in the judgment and lien docket, if the judgment shall have been entered, on the application of the prevailing party, upon 3 days' notice to the other, the sum of the costs and disbursements as provided in this chapter, verified by affidavit.

(2) **COST BILL, SERVICE.** All bills of costs shall be itemized and served with the notice of taxation.

(3) **OBJECTIONS, PROOFS, ADJOURNMENT.** The party opposing such taxation, or the taxation of any particular item shall file with the clerk a particular statement of the party's objections, and the party may produce proof in support thereof and the clerk may adjourn such taxation, upon cause shown, a reasonable time to enable either party to produce such proof.

(4) **COURT REVIEW.** The clerk shall note on the bill all items disallowed, and all items allowed, to which objections have been made. This action may be reviewed by the court on motion of the party aggrieved made and served within 10 days after taxation. The review shall be founded on the bill of costs and the objections and proof on file in respect to the bill of costs. No objection shall

be entertained on review which was not made before the clerk, except to prevent great hardship or manifest injustice. Motions under this subsection may be heard under s. 807.13.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.10; Sup. Ct. Order, 141 Wis. 2d xxvi; 1987 a. 403; 1993 a. 486; 1995 a. 224.

Judicial Council Note, 1988: Sub. (4) is amended to allow motions to review costs to be heard by telephone conference. [Re Order effective Jan. 1, 1988]

When a judgement included attorney fees exceeding the statutory limit and the clerk did not tax costs, an objection under sub. (4) was not required to allow consideration of the issue on appeal. *Running v. Widdes*, 52 Wis. 2d 254, 190 N.W.2d 169 (1971).

814.11 Disbursements, how proved. Charges in a bill of costs for witness fees, or copies of documents or other disbursements, except to officers for services shall not be taxed without an affidavit stating the distance the witnesses respectively traveled and the days they actually attended, and an affidavit that such copies were necessarily obtained for use; nor shall such other disbursements be allowed without an affidavit specifying the items thereof, nor unless they appear to have been necessary and reasonable in amount.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.11.

814.12 Costs may be set off. If, in any action, a recovery may be had by one party and costs be awarded to the other the court may set off one against the other and render judgment for the balance.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.12.

814.13 Referee; court to fix and allow fees. After the trial of any issue by a referee pursuant to a compulsory reference for that purpose his or her fees and expenses shall be fixed by the court in which his or her report has been filed and paid by the state as other circuit court expenses are paid. In all other cases the compensation of referees shall be \$3 for each day necessarily occupied with the business of the reference; but the parties may agree in writing upon any other rate of compensation.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.13; 1977 c. 449.

814.131 Taxing costs on compulsory references. In all cases of compulsory reference in which the fees claimed by the referee exceed \$50, the fees shall not be allowed until a hearing is had on the fees, upon 10 days' notice to the district attorney of the county, accompanied by a copy of the bill.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.131; 1997 a. 254.

814.14 Fiduciary; liability for costs limited; bond premium. (1) (a) Except as provided in par. (b) or unless otherwise specifically provided in any action or proceeding prosecuted or defended in any court in this state by a personal representative, guardian ad litem, trustee of an express trust, general guardian or person expressly authorized by statute, costs may be recovered as in an action by or against a person prosecuting or defending in the person's own right.

(b) Except in cases in which the plaintiff or defendant is guilty of mismanagement or bad faith in the action, proceeding, or defense of the action, costs recovered under par. (a) shall be chargeable only upon or collected from the estate, fund, or party represented. In cases in which the plaintiff or defendant is guilty of mismanagement or bad faith in the action, proceeding, or defense of the action, the court shall direct that the costs recovered under par. (a) shall be paid by the plaintiff or defendant personally.

(2) In addition to other costs, all actions or proceedings in which any fiduciary may be entitled to recover costs, the fiduciary may recover any sum that the fiduciary paid to a company, authorized by the laws of this state to act as the fiduciary's surety, for becoming the fiduciary's surety upon any bond or other obligation given by the fiduciary in the fiduciary's representative capacity in the action or proceeding pursuant to law or the order of any court, as may be allowed by the court in which the fiduciary accounts,

not exceeding the lesser of 2% per year on the amount secured by the obligation or the actual amount paid to the company.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.14; 1979 c. 110 s. 60 (13); 1993 a. 486; 2001 a. 102.

814.15 Assignee's liability for costs. In actions in which the cause of action shall, by assignment, after the commencement of the action or in any other manner become the property of a person not a party to the action the person shall be liable for the costs in the same manner as if the person were a party; and payment thereof may be enforced by attachment.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.15; 1993 a. 486.

814.16 Settlement, costs on. Except as provided in s. 93.20, upon settlement of an action no greater sum may be demanded for costs than at the rate prescribed in this chapter.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.16; 1991 a. 39.

814.19 Records copied not to be taxed for. No record, writ, return, pleading, instrument or other writing copied into any proceeding, entry, process or suggestion shall be computed as any part of the draft of such proceeding, entry, process or suggestion.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.19.

814.22 What county to pay costs when venue changed or jury selected for use in another county, taxation, certification. (1) In all proceedings, including criminal actions, if a change of venue is had (except in cases where the change is made because the action was not brought in the proper county), the jury is selected for use in another county under s. 971.225 or an action, occupying a day or more, is tried outside the county wherein pending, the county in which the action was commenced shall pay to the county in which the action is tried or the jury is selected the following expenses arising out of the change of venue or jury selection:

(a) The per diem fees of the clerk or the clerk's deputies, all the taxable costs, disbursements and fees of such clerk on any proceeding or action.

(b) The per diem fees of the petit jurors actually in attendance upon said court.

(c) The per diem fees of the sheriff, undersheriff and deputies in attendance upon said court.

(d) All lawful charges for boarding the jury.

(e) The legal fees of all witnesses in any criminal case or proceedings which are a charge against the county.

(f) All charges for subpoenaing witnesses in any criminal case or proceedings and which are a proper charge against the county. The fees of such officers and jurors shall be estimated for each day and part of a day, not less than half a day, occupied in disposing of any such action.

(g) Such other lawful costs, charges, fees, and disbursements which are chargeable to the county, and all lawful costs, disbursements and charges which any such county may be subjected to or may incur in any such action or proceedings.

(2) The clerk shall make out a correct bill of all the expenses which shall accrue under this section and have the bill taxed and allowed by the presiding judge of the court; and when so taxed shall transmit the bill to the county clerk of the county in which the action was commenced. A county order therefor shall issue in favor of the county in which the action or proceedings were had or tried or in which the jury was selected.

(3) If costs are to be taxed against a county under this section, the district attorney of the county where the action or proceeding was tried or in which the jury was selected shall serve upon the district attorney of the county sought to be charged with the expense a copy of the bill of expenses, together with 8 days notice of the time and place the bill will be taxed before the presiding judge of

the court. No such bill of expense may be allowed unless the notice is given or is waived in writing.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.22; 1977 c. 449; 1981 c. 115; 1993 a. 486.

814.23 Actions by or against county. In all actions by or against a county, and in actions or proceedings by or against county officers in their name of office, costs shall be awarded to the prevailing party as in actions between individuals.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.23.

A prevailing plaintiff in a habeas corpus proceeding may not be awarded costs. State ex rel. Korne v. Wolke, 79 Wis. 2d 22, 255 N.W.2d 446 (1977).

814.24 Action against city, village or town official, cost. Costs, if any, in an action against a city, village or town officer in his or her official capacity, except an action directly involving the title to the office, and except as provided in s. 814.25, shall not be awarded against that officer, but may be awarded against the city, village or town.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.24; 1993 a. 246; 1997 a. 133.

814.245 Actions by state agencies. (1) The legislature intends that courts in this state, when interpreting this section, be guided by federal case law, as of November 20, 1985, interpreting substantially similar provisions under the federal equal access to justice act, 5 USC 504.

(2) In this section:

(a) “Nonprofit corporation” has the meaning designated in s. 181.0103 (17).

(b) “Small business” means a business entity, including its affiliates, which is independently owned and operated, and which employs fewer than 25 full–time employees or which has gross annual sales of less than \$2,500,000.

(c) “Small nonprofit corporation” means a nonprofit corporation which employs fewer than 25 full–time employees.

(d) “State agency” does not include the citizens utility board.

(e) “Substantially justified” means having a reasonable basis in law and fact.

(3) Except as provided in s. 814.25, if an individual, a small nonprofit corporation or a small business is the prevailing party in any action by a state agency or in any proceeding for judicial review under s. 227.485 (6) and submits a motion for costs under this section, the court shall award costs to the prevailing party, unless the court finds that the state agency was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

(4) In determining the prevailing party in actions in which more than one issue is contested, the court shall take into account the relative importance of each issue. The court shall provide for partial awards of costs under this section based on determinations made under this subsection.

(5) If the court awards costs under sub. (3), the costs shall include all of the following which are applicable:

(a) The reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the case and reasonable attorney or agent fees. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that:

1. No expert witness may be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency which is the losing party.

2. Attorney or agent fees may not be awarded in excess of \$75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents, justifies a higher fee.

(b) Any other allowable cost specified under s. 814.04 (2).

(6) A party seeking an award under this section shall, within 30 days after final judgment in the action, submit to the clerk under s. 814.10 (1) an itemized application for fees and other expenses,

including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. Section 814.10 applies for the procedure for taxation of costs, except that the clerk shall allow the state agency 15 working days to respond under s. 814.10 (3).

(7) The court acting under s. 814.10 (4) may reduce the amount awarded under this section or deny an award if it finds that the prevailing party engaged in conduct which unduly and unreasonably delayed the action.

(8) An individual is not eligible to recover costs under this section if the person’s properly reported federal adjusted gross income was \$150,000 or more in each of the 3 calendar years or corresponding fiscal years immediately prior to the commencement of the action. This subsection applies whether the person files the tax return individually or in combination with a spouse.

(9) If a state agency is ordered to pay costs under this section, the costs shall be paid from the applicable appropriation under s. 20.865 (1) (a), (g) or (q).

(10) Each state agency that is ordered to pay costs under this section or that recovers costs under sub. (11) shall report annually, as soon as is practicable after June 30, to the presiding officer of each house of the legislature the number, nature and amounts awarded, the claims involved in the action in which the costs were incurred, the costs recovered under sub. (11) and any other relevant information to aid the legislature in evaluating the effect of this section.

(11) If the court finds that the motion under sub. (3) is frivolous, the examiner may award the state agency all reasonable costs in responding to the motion. In order to find a motion to be frivolous, the court must find one or more of the following:

(a) The motion was submitted in bad faith, solely for purposes of harassing or maliciously injuring the state agency.

(b) The party or the party’s attorney knew, or should have known, that the motion was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

History: 1985 a. 52; 1985 a. 182 s. 57; 1985 a. 332 s. 253; 1995 a. 27; 1997 a. 79, 133.

A petitioner must receive at least some requested relief in order to “prevail” under sub. (3). *Kitsemble v. DHSS*, 143 Wis. 2d 863, 422 N.W.2d 896 (Ct. App. 1988).

The 30–day period in sub. (6) commences at the time that the matter is disposed of in favor of the party following remand to an administrative agency. *Sheely v. DHSS*, 150 Wis. 2d 320, 442 N.W.2d 1 (1989).

In order for a state agency’s position to be “substantially justified” under sub. (3), it must have a reasonable basis in truth and in law and there must be a reasonable connection between the facts alleged and the legal theory advanced. An agency’s failure to provide required written notice in terminating medical assistance benefits did not have a reasonable basis in law. *Stern v. DHFS*, 212 Wis. 2d 393, 569 N.W.2d 79 (Ct. App. 1997).

The appropriate base for a cost of living adjustment to the award of attorney fees under sub. (5) (a) 2. is November, 1985, the date of enactment of the statute. *Stern v. DHFS*, 222 Wis. 2d 521, 588 N.W.2d 658 (Ct. App. 1998).

814.25 Costs in actions by prisoners. (1) In this section:

(a) “Prisoner” has the meaning given in s. 801.02 (7) (a) 2.

(b) “Prison or jail conditions” has the meaning given in s. 801.02 (7) (a) 3.

(2) (a) Except as provided in par. (b), if a prisoner brings an action or special proceeding related to prison or jail conditions, no costs may be allowed against the state, a state agency or a county, city, village or town, or against any individual defendant when sued in an official capacity.

(b) Costs are allowable to a prisoner who obtains prospective injunctive relief against an individual defendant when that defendant is sued in an official capacity and to a prisoner who obtains a judgment against a defendant when that defendant is sued in his or her personal capacity. This paragraph does not apply to actions or special proceedings related to prison or jail conditions that seek a remedy available by certiorari.

(3) If the prevailing party is the state, a state agency or a county, city, village or town or an individual in any action or special proceeding commenced by a prisoner related to prison or jail

conditions, the prisoner shall pay the full costs allowed under this chapter. The prisoner shall be required to pay the costs out of any trust fund accounts that he or she holds in the same manner as payment is required for court fees under s. 814.29 (1m) (e).

History: 1997 a. 133.

814.27 Security for costs. Except as provided in s. 655.27 (5) (a) 3., in all cases where it shall appear reasonable and proper the court may require the plaintiff to give sufficient security for such costs as may be awarded against the plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.27; 1983 a. 158; 1993 a. 486.

814.28 Security for costs. (1) DEFENDANT MAY REQUIRE. Except as otherwise provided by s. 814.29, the defendant may require the plaintiffs to file security for costs if the plaintiffs are all nonresidents; or are foreign corporations, nonresident personal representatives, guardians, trustees, or receivers; or are trustees or assignees of any debtor; or are imprisoned for crime for terms less than life; or shall take issue upon the answer of the garnishee.

(2) ORDER FOR SECURITY. Upon proof by affidavit entitling the defendant to security for costs, the court shall order the plaintiffs to file security for costs in a sum mentioned in the affidavit, not less than \$250, within 20 days after the service upon the plaintiffs of a copy of the order requiring the security for costs, and that all proceedings on the part of the plaintiffs be stayed until security is filed.

(3) SECURITY, HOW GIVEN. Within the time required the plaintiffs shall file with the clerk of the court, and give the defendant notice thereof, an undertaking with sureties, each of whom shall justify, by affidavit, in the sum stated in the undertaking, above liabilities and exemptions, in property in this state, conditioned to pay on demand all costs that may be awarded to the defendant in such action in any court, not exceeding the sum mentioned in such order. Upon failure to file such undertaking the court may, upon motion of the defendant, dismiss the action.

(4) DEPOSIT IN LIEU OF UNDERTAKING. The plaintiffs in lieu of an undertaking under sub. (3) may deposit with the clerk of the court, who shall give a receipt therefor, money equal to the amount specified in the order for security, and give notice of the deposit.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.28; 1997 a. 254; 1999 a. 85; 2001 a. 102.

814.29 Security for costs, service and fees for indigents. (1) (a) Except as provided in sub. (1m), any person may commence, prosecute or defend any action or special proceeding in any court, or any writ of error or appeal therein, without being required to give security for costs or to pay any service or fee, upon order of the court based on a finding that because of poverty the person is unable to pay the costs of the action or special proceeding, or any writ of error or appeal therein, or to give security for those costs.

(b) A person seeking an order under par. (a) shall file in the court an affidavit in the form prescribed by the judicial conference, setting forth briefly the nature of the cause, defense or appeal and facts demonstrating his or her poverty.

(c) The finding and order of the court under par. (a) shall be in the form prescribed by the judicial conference. The court may deny the request for an order if the court finds that the affidavit states no claim, defense or appeal upon which the court may grant relief.

(d) The court shall make a finding of poverty and issue an order under par. (a) if the affidavit demonstrates any of the following:

1. That the person is a recipient of means-tested public assistance, including aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps or benefits received by veterans under s. 45.351 (1) or under 38 USC 501 to 562.

2. That the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency.

3. That the person is otherwise unable, because of poverty, to pay the costs of the action, proceeding or appeal or to give security for those costs. In determining the person's ability under this subdivision to pay or give security for fees and costs, the court shall consider the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902 (2).

(1m) (a) In this subsection, "prisoner" has the meaning given in s. 801.02 (7) (a) 2.

(b) If a prisoner makes a request for leave to commence or defend an action, special proceeding, writ of error or appeal without being required to prepay the fees or costs or without being required to give security for costs, the prisoner shall submit all of the following:

1. The affidavit required under sub. (1) (b).

2. A certified copy of the trust fund account statement for the prisoner for the 6-month period immediately preceding the filing of the request for leave to commence or defend an action, special proceeding, writ of error or appeal, or for the period that the prisoner was incarcerated, imprisoned or detained, if that period is less than 6 months. The trust fund account statement must be obtained from the appropriate official at each facility in which the prisoner is or was incarcerated, imprisoned, confined or detained. "Trust fund account statement" includes accounts accessible to the prisoner before or upon release.

(c) Except when dismissal is required under s. 801.02 (7) (d), the court shall issue an order permitting the prisoner to commence or defend an action, special proceeding, writ of error or appeal without the prepayment of fees or costs or without being required to give security for costs if all of the following conditions are met:

1. The court determines that the prisoner does not have assets or other means by which to pay the fees or costs or to give security for the costs after reviewing the information provided under par. (b).

2. The prisoner authorizes in writing the agency having custody of the prisoner's prison trust fund account to forward payments from the prisoner's account to the clerk of court each time the amount in the account exceeds \$10 until the fees or costs are paid in full.

(d) If the court determines that the prisoner who made the affidavit does have assets in a trust fund account, whether accessible to the prisoner only upon release or before release, the court shall order an initial partial filing fee to be paid from that trust fund account before allowing the prisoner to commence or defend an action, special proceeding, writ of error or appeal. The initial filing fee shall be the current balance of the prisoner's trust fund account or the required filing fee, whichever is less.

(e) The agency having custody of the prisoner shall freeze the prisoner's trust fund account until the deposits in that account are sufficient to pay the balance owed for the costs and fees. When the deposits in that account are sufficient to pay the balance owed for the court costs and fees, the agency shall forward that amount to the court. This paragraph does not prohibit the payment from the prisoner's trust fund account of court-ordered payments for child or family support, restitution or federal court fees or for the payments of debts owed to the department of corrections.

(f) If the court believes that a prisoner is in imminent danger of serious physical harm, the court shall issue an order permitting the prisoner to commence or defend an action, special proceeding, writ of error or appeal without being required to submit the statement under par. (b) or prepaying the initial partial filing fee under par. (d).

(g) Except as provided under par. (f), if a prisoner files an action, special proceeding, writ of error or appeal under this subsection without complying with the requirements under pars. (b) and (d), the court shall dismiss the action, special proceeding, writ of error or appeal without prejudice.

(h) The custodian of the trust fund account of a prisoner shall provide the prisoner with the certified copy of the trust fund account statement required under par. (b) if the custodian determines that the prisoner requires that copy for submittal to a court under this subsection.

(2) The court may dismiss any action or proceeding or may require the payment of, or the giving of security for, costs, fees and service if the court determines that the allegation of poverty is untrue. The court may later require the payment of, or the giving of security for, costs, fees and service if the court determines that the person no longer meets any of the requirements under sub. (1).

(3) RECOVERY OF FEES. (a) A request for leave to commence or defend an action, proceeding, writ of error or appeal without being required to pay fees or costs or to give security for costs constitutes consent of the affiant and counsel for the affiant that if the judgment is in favor of the affiant the court may order the opposing party to first pay the amount of unpaid fees and costs, including attorney fees under ss. 802.05, 804.12 (1) (c) and 814.025 and under 42 USC 1988 and to pay the balance to the plaintiff.

(b) If the affiant is a prisoner, as defined in s. 801.02 (7) (a) 2., or a person confined in a federal correctional institution located in this state, a request for leave to commence or defend an action, special proceeding, writ of error or appeal without being required to pay fees or costs or to give security for costs constitutes consent as provided in par. (a), and, if the judgment is in favor of the opposing party, constitutes consent for the court to order the institution to deduct the unpaid fees and costs, including attorney fees listed in par. (a), from the amount in the inmate's account at any time the account has sufficient money to pay the unpaid fees and costs. This paragraph does not prevent the collection of the unpaid fees and costs by any other method.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.29; 1981 c. 317; 1983 a. 538; 1989 a. 31; Sup. Ct. Order No. 93–15, 179 Wis. 2d xxxi; 1993 a. 490; 1995 a. 27, 201; 1997 a. 133.

Judicial Council Note, 1993: The amendments to sub. (1) are intended to simplify and make more uniform the procedure for determining when costs and fees for indigent persons should be waived by the court. The form of the affidavit and court finding and order is to be prescribed by the Judicial Conference. To simplify the determination of indigency, detailed financial statements are not necessary if the person is receiving means-tested public assistance or legal services based on indigency. Amended sub. (2) allows the court to require payment of fees if it is later shown that the person is no longer indigent.

The trial judge may refuse to approve an affidavit of indigency if the complaint or affidavit to obtain waiver of costs and fees fails to give notice of a claim upon which relief may be granted. State ex rel. Rilla v. Dodge County Circuit Court, 76 Wis. 2d 429, 251 N.W.2d 476 (1977).

The bond requirement under s. 775.01 in an action against the state may be waived under s. 814.29 (1). Boldt v. State, 101 Wis. 2d 566, 305 N.W.2d 133 (1981).

A judge may waive the fee for a trial transcript at the request of an appealing indigent who has arguable reason to believe that he or she is entitled to redress on appeal. Girouard v. Jackson County Circuit Court, 155 Wis. 2d 148, 454 N.W.2d 792 (1990).

In making a *Girouard* determination, the trial court should specifically consider the litigant's income and assets, expenses, including unusual expenses, and the projected cost of the transcript requested. State v. Jacobus, 167 Wis. 2d 230, 481 N.W.2d 642 (Ct. App. 1992).

Whether a proposed petition or complaint states a claim for the purposes of granting fee waiver is determined using the same standard that is applied to motions to dismiss for failure to state a claim under s. 802.06. State ex rel. Luedtke v. Bertrand, 220 Wis. 2d 574, 583 N.W.2d 858 (Ct. App. 1998).

The definition of "prisoner" in s. 801.02 (7) (a) 2. does not include a Wisconsin inmate sent to an out-of-state county jail, and therefore sub. (1), and not sub. (1m), applies to the inmate. State ex rel. Speener v. Gudmanson, 2000 WI 78, 234 Wis. 2d 461, 610 N.W.2d 136.

Sub. (1m) (c), as applied to the petitioner, did not violate the constitutional guarantees of access to the courts or equal protection. State ex rel. Khan v. Sullivan, 2000 WI App 109, 235 Wis. 2d 260, 613 N.W.2d 203.

The 45-day deadline for filing a certiorari action under s. 895.735 is tolled once the clerk of court receives a petition for a writ of certiorari and, pursuant to sub. (1m), a request for a fee waiver, affidavit of indigency, and certified copy of the prisoner's trust account statement, provided that the prisoner has authorized the prison to make any appropriate payments toward the filing fees from his or her accounts. State ex rel. Steldt v. McCaughy, 2000 WI App. 176, 238 Wis. 2d 393, 617 N.W.2d 201.

814.33 Additional security for costs. If any surety on any undertaking given under s. 814.28 shall remove from the state or be deemed at any time insufficient the court or presiding judge may require the plaintiff to give a new undertaking, and every person becoming surety thereon shall be liable for all costs, from the commencement of the action, in like manner as if the successor surety had been the original surety.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.33; 1993 a. 486.

814.34 Attorney for plaintiff liable for costs. In any case in which the defendant, at the time of the commencement of the action, may require security for costs the attorney for the plaintiff shall be liable for such costs not exceeding \$100, until security therefor is filed, whether such security shall have been required by the defendant or not; but such attorney is relieved from such liability by filing an undertaking as prescribed by s. 814.28, and giving notice thereof.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 781 (1975); Stats. 1975 s. 814.34; 1993 a. 486.

814.46 Taxation after settlement. Upon the settlement of an execution by a defendant or upon settling any action or demand the sheriff or attorney claiming any fees which shall not have been taxed shall, upon being required by the defendant and on his or her paying the expenses thereof, have his or her fees taxed by some proper officer authorized to tax costs in the court in which the action may be pending or from which the execution shall have been issued.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.46; 1993 a. 486.

814.47 Fees not collectible till taxed. No sheriff, attorney or other person shall collect any fees, after having been required as aforesaid to have the same taxed, without such taxation having been made.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.47.

814.48 Duty of officers taxing costs. Every officer authorized to tax costs in any court for services in any proceeding shall examine the bills presented for taxation, whether such taxation be opposed or not, and must be satisfied that the items charged are correct and legal, and shall strike out all charges for services which, in the officer's judgment, were not necessary.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.48; 1993 a. 486.

814.49 Costs on dismissal for lack of jurisdiction or stay of proceedings. (1) COSTS ON DISMISSAL FOR LACK OF PERSONAL JURISDICTION. If on objection of any defendant made pursuant to s. 802.06 (2) the action is dismissed as to that defendant on the ground that the court lacks jurisdiction over the defendant's person, the court when entering judgment dismissing the action against the defendant may order the plaintiff to pay to the defendant all reasonable actual costs, disbursements and expenses of the action up to the judgment of dismissal, but the amount so recovered can in no case exceed the sum of \$500.

(2) COSTS ON STAY OF FURTHER PROCEEDINGS. Whenever any party obtains an order staying further proceedings in the action pursuant to s. 801.63, the court may award that party all statutory costs and disbursements in the action up to the order for stay.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 781 (1975); Stats. 1975 s. 814.49; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1993 a. 486.

Judicial Council Note, 1986: Sub. (2) is amended to give the court discretion to award or deny costs and disbursements when further proceedings are stayed pending trial in another state under s. 801.63. [Re Order eff. 7–1–86]

814.51 Jury fees; discretion of court. The court shall have discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees for a jury, including all mileage costs, against either the plaintiff or defendant or to divide the cost and assess the cost against both plaintiff and defendant, or additional parties plaintiff or defend-

ant, if a jury demand has been made in any case and if a jury demand is later withdrawn within 2 business days prior to the time set by the court for the commencement of the trial. The party assessed shall be required to make payment to the clerk of circuit court within a prescribed period and the payment thereof shall be enforced by contempt proceedings.

History: 1971 c. 297; Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.51; 1977 c. 318.

This section is inapplicable if the parties reach settlement after selecting a jury and making opening statements. *Jacobson v. Avestruz*, 81 Wis. 2d 240, 260 N.W.2d 267 (1977).

An accused who cancels a jury trial at the last moment to accept a plea bargain risks both taxation of costs under s. 973.06 and the assessment of jury fees under s. 814.51. *State v. Foster*, 100 Wis. 2d 103, 301 N.W.2d 192 (1981).

Circuit courts do not have the authority to impose a penalty for cancellation of a jury trial beyond that provided for in this section. *Collins v. American Family Mutual Insurance Co.* 153 Wis. 2d 477, 451 N.W.2d 429 (1990).

SUBCHAPTER II

COURT FEES

814.60 Criminal actions; fees of the clerk of court.

(1) In a criminal action, the clerk of circuit court shall collect a fee of \$20 for all necessary filing, entering or recording, to be paid by the defendant when judgment is entered against the defendant. Of the fees received by the clerk of circuit court under this subsection, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(2) In addition to any fine imposed, a defendant shall be required to pay any of the following that applies:

- (a) The penalty assessment imposed by s. 757.05.
- (ag) The jail assessment imposed by s. 302.46 (1).
- (ai) The consumer protection assessment imposed by s. 100.261.
- (am) The crime victim and witness assistance surcharge imposed by s. 973.045.
- (an) The crime laboratories and drug law enforcement assessment imposed under s. 165.755.
- (ap) The deoxyribonucleic acid analysis surcharge imposed by s. 973.046.
- (b) The domestic abuse assessment imposed by s. 971.37 (1m) (c) 1. or 973.055.
- (bm) The uninsured employer assessment imposed by s. 102.85 (4).
- (c) The driver improvement surcharge imposed by s. 346.655.
- (cg) The enforcement assessment imposed by s. 253.06 (4) (c).
- (cn) The drug abuse program improvement surcharge imposed by s. 961.41 (5).
- (cs) The environmental assessment imposed by s. 299.93.
- (d) The natural resources assessment imposed by s. 29.987.
- (e) The natural resources restitution payment imposed by s. 169.46 (2) or 29.989.
- (eg) The truck driver education assessment imposed by s. 349.04.
- (em) The wild animal protection assessment imposed by s. 29.983.
- (f) The weapons assessment imposed by s. 167.31 (5).

History: 1981 c. 317; 1983 a. 27; 1985 a. 36; 1987 a. 27, 339; 1989 a. 64, 107; 1991 a. 39; 1993 a. 16; 1995 a. 224, 227, 448; 1997 a. 27, 248; 1999 a. 9; 2001 a. 16, 56, 103.

Because each charged count requires filing, entering, and recording that is separate and distinct from other charged counts, sub. (1) permits a separate fee for each count. *State v. Carter*, 229 Wis. 2d 200, 598 N.W.2d 619 (Ct. App. 1999).

Neither the clerk of court nor the county board has the authority to adopt a non-refundable processing fee in the absence of a statute specifically providing for the fee. 80 Atty. Gen. 223.

814.61 Civil actions; fees of the clerk of court. In a civil action, the clerk of court shall collect the fees provided in this section. Unless a specific exemption is provided, a governmental

unit, as defined in s. 108.02 (17), shall pay fees under this section. The clerk shall collect the following fees:

(1) COMMENCEMENT OF ACTIONS. (a) Except as provided under pars. (c), (d) and (e), at the commencement of all civil actions and special proceedings not specified in ss. 814.62 to 814.66, \$75. Of the fees received by the clerk under this paragraph, the county treasurer shall pay \$45 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$15 of the \$45 to the appropriation under s. 20.680 (2) (j).

(b) Except as provided in pars. (c), (d) and (e), in addition to the fee under par. (a), at the commencement of an action affecting the family as defined in s. 767.02, a fee of \$20 to be deposited by the county treasurer in a separate account to be used by the county exclusively for the purposes specified in s. 767.11.

(c) Paragraphs (a) and (b) do not apply to any of the following:

1. An action to determine paternity brought by the state or its delegate under s. 767.45 (1) (g) or (h) or commenced on behalf of the child by an attorney appointed under s. 767.045 (1) (c).
2. An action under ch. 769.
3. A forfeiture proceeding under ss. 961.55 to 961.56 or 973.075 to 973.077.
4. An action to terminate parental rights under subch. VIII of ch. 48.
5. An action for adoption under subch. XIX of ch. 48.

(d) No fee charged under this subsection in any action commenced under s. 813.12 may be collected from a petitioner under s. 813.12. The fee charged under this subsection for petitions filed and granted under s. 813.12 shall be collected from the respondent under s. 813.12 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4).

(e) No fee charged under this subsection in any action commenced under s. 813.122, 813.123, or 813.125 may be collected from a petitioner under s. 813.122, 813.123, or 813.125 if the petition alleges conduct that is the same as or similar to conduct that is prohibited by s. 940.32 or that is listed in s. 813.12 (1) (am) 1. to 6. If no fee is collected under this paragraph, the fee charged under this subsection for petitions filed and granted under s. 813.122, 813.123, or 813.125 shall be collected from the respondent under s. 813.122, 813.123, or 813.125 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4).

(2) CHANGE OF VENUE. (a) Except as provided in par. (b), on a change of venue at commencement in the court to which the action is transferred, a fee equal to the fee paid by the plaintiff to commence the action. The transferring court, in its order for change of venue, shall make a finding as to which party's actions necessitated the change of venue and shall order that party to pay the fee, which shall not be taxed as a cost in the action.

(b) If the court orders a change of venue under s. 801.52, no fee may be charged.

(3) THIRD-PARTY COMPLAINT. When any defendant files a 3rd-party complaint, the defendant shall pay a fee of \$45. The defendant shall pay only one such \$45 fee in an action. Of the fees received by the clerk under this subsection, the county treasurer shall pay \$25 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$25 to the appropriation under s. 20.680 (2) (j).

(4) JURY FEE. For a jury in all civil actions, except a garnishment action under ch. 812, a nonrefundable fee of \$6 per juror demanded to hear the case to be paid by the party demanding a jury within the time permitted to demand a jury trial. If the jury fee is not paid, no jury may be called in the action, and the action may be tried to the court without a jury.

(5) JUDGMENTS, WRITS, EXECUTIONS, LIENS, WARRANTS, AWARDS, CERTIFICATES. The clerk shall collect a fee of \$5 for the following:

(a) Issuing executions, certificates, commissions to take depositions, transcripts from the judgment and lien docket, and any writs not commencing an action or special proceeding.

(b) Filing and entering judgments, transcripts of judgments, liens, warrants and awards, including filing and entering assignments or satisfactions of judgments, liens or warrants and withdrawals, satisfactions and voidances of tax warrants under s. 71.91 (5) (g).

(6) FOREIGN JUDGMENTS. On filing a foreign judgment under s. 806.24, \$15.

(7) REVISION OF JUDGMENT OR ORDER IN ACTION AFFECTING THE FAMILY. (a) Except as provided in par. (b), upon the filing of any petition under s. 767.32 (1) or any motion, by either party, for the revision of a judgment or order in an action affecting the family, \$30. No fee may be collected under this paragraph for any petition or motion by either party for the revision of a judgment or order involving child support, family support or maintenance if both parties have stipulated to the revision of the judgment or order. Of the fees received by the clerk under this paragraph, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(b) Upon the filing of any petition, motion or order to show cause by either party under s. 767.325 or 767.327, \$50. Of the fees received by the clerk under this paragraph, the county treasurer shall pay 25% to the state treasurer for deposit in the general fund, retain 25% for the use of the county and deposit 50% in a separate account to be used by the county exclusively for the purposes specified in s. 767.11.

(c) Paragraphs (a) and (b) do not apply to a petition or motion filed by the state or its delegate in connection with an action to determine paternity under s. 767.45 (1) (g), to a petition or motion filed by an attorney appointed under s. 767.045 (1) (c) in connection with an action to determine paternity when the circumstances specified in s. 767.045 (1) (c) 1. or 2. apply or to a petition or motion filed in an action under ch. 769.

(8) APPEAL FROM MUNICIPAL COURT OR ADMINISTRATIVE DECISION. (am) On appeal from municipal court or on review of any administrative decision, including an appeal from a commission's award in a condemnation action under ch. 32:

1. If the appeal or review is by certiorari or on the record, \$40.
2. If a new trial is authorized and requested, \$55.

(c) Of the fees received by the clerk under par. (am) 1., the county treasurer shall pay \$22.50 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$22.50 to the appropriation under s. 20.680 (2) (j).

(d) Of the fees received by the clerk under par. (am) 2., the county treasurer shall pay \$30 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$30 to the appropriation under s. 20.680 (2) (j).

(9) TRANSMITTING DOCUMENTS. For certifying and transmitting documents upon appeal, writ of error, change of venue, for enforcing real estate judgments in other counties, or for enforcing judgments in other states, \$15 plus postage.

(10) COPIES. (a) Except as provided in par. (b), for copies, certified or otherwise, of any document for which a specific fee is not established by this section, or for comparison and attestation of copies not provided by the clerk, \$1.25 per page.

(b) For copies of any court document requested by the state public defender, other than a transcript, a fee equal to the actual, necessary and direct costs of copying.

(11) SEARCHES. For searching files or records to locate any one action when the person requesting the search does not furnish the case number of the action, or to ascertain the existence or non-

existence of any instrument or record in the custody of the clerk of circuit court, \$5.

(12) RECEIVING AND DISBURSING MONEY. (a) *Trust funds and small estates.* 1. For receiving a trust fund, or handling or depositing money under s. 757.25, 807.10 (3) or 880.04 (2) (a), at the time the money is deposited with the clerk, a fee of \$10 or 0.5% of the amount deposited, whichever is greater. In addition, a fee of \$10 shall be charged upon each withdrawal of any or all of the money deposited with the clerk.

2. If the clerk is required by court order or by law to deposit any of the funds in subd. 1. in an account in a bank, savings bank, savings and loan association or other suitable financial institution, the type of account shall be in the clerk's discretion unless the court specifies a particular type of account in its order. In depositing the funds into any account, the clerk shall act as a conservator, not as a trustee, and shall not be held liable or responsible for obtaining any specific rate of interest on the deposit.

(c) *Deposits in contempt proceedings.* For receiving and disbursing deposits made under s. 818.12 in contempt proceedings under ch. 785, \$10 per deposit. The \$10 fee shall be deducted from the deposit, unless the entire deposit is ordered returned to the defendant, before applying the deposit to the satisfaction of a judgment under s. 818.14.

(13) SUPPORT OR MAINTENANCE PETITION. For the cost of court services, whenever a person not receiving benefits under s. 49.148 or 49.155 or aid under s. 49.19, 49.46, 49.465, 49.468 or 49.47 files a petition requesting child support, maintenance or family support payments, \$10 in addition to any other fee required under this section. This subsection does not apply to a petition filed by the state or its delegate.

(14) PETITION FOR OCCUPATIONAL LICENSE. On filing a petition for an occupational license under s. 343.10 (4), \$40.

History: 1981 c. 317; 1983 a. 27; 1983 a. 189 s. 329 (28); 1983 a. 228, 447, 538; 1985 a. 29, 169; 1987 a. 27 ss. 2143p, 3202 (24); 1987 a. 144, 355, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 191; 1991 a. 39, 221, 269; 1993 a. 16, 319, 326, 481, 491; 1995 a. 27, 201, 224, 269, 279, 289, 306; 1997 a. 27, 35, 285; 1999 a. 9, 71; 2001 a. 109.

Requiring the payment of a jury fee does not violate the right to a trial by jury. *County of Portage v. Steinpreis*, 104 Wis. 2d 466, 312 N.W.2d 731 (1981).

The trial court has discretion to allow a jury trial when fees under s. 814.61 (4) are not timely paid. *Chitwood v. A. O. Smith Harvestore*, 170 Wis. 2d 622, 489 N.W.2d 697 (Ct. App. 1992).

Circumstances under which additional fees under sub. (13) are to be paid are discussed. 75 Atty. Gen. 1.

The enforcement of sub. (12) (b) is discussed. 76 Atty. Gen. 100.

A clerk of court's authority under sub. (12) (b) is discussed. 76 Atty. Gen. 265.

Neither the clerk of court nor the county board has the authority to adopt a non-refundable processing fee in the absence of a statute specifically providing for the fee. 80 Atty. Gen. 223.

A domestic abuse petition filed under s. 813.12 (2) in conjunction with or in a pending action affecting the family does not require a separate filing fee. 80 Atty. Gen. 231.

814.615 Fees for mediation and studies. (1) (a) Except as provided under sub. (2), for family court counseling services provided under s. 767.11 a county shall collect the following fees:

1. For the first mediation session conducted upon referral under s. 767.11 (5), no fee.

2. For all mediation provided after the first session mediation described under subd. 1., a single fee of \$200, regardless of the number of mediation sessions held.

3. For a study under s. 767.11 (14), a fee of \$300.

(b) The county shall determine when and how to collect the fees under par. (a). Subject to sub. (3), the county shall reduce the fees in accordance with the parties' ability to pay or provide the services without payment of the fees if both parties are unable to pay.

(2) In lieu of the fee under sub. (1) (a) 2. or 3., a county may establish a fee schedule to recover its reasonable costs of providing family court counseling services under s. 767.11. A fee schedule established under this subsection may apply in lieu of the fee under sub. (1) (a) 2. or 3. or both, and shall require no fee for the first mediation session conducted upon referral under s. 767.11 (5); provide for payment for any other services based on the par-

ties' ability to pay; and take into account the fees the county collects under s. 814.61 (1) (b) and (7) (b). Fees shall be based on services actually provided. The county may not collect a single fee applicable without regard to the number of sessions or services provided. Subject to sub. (3), the county shall provide family court counseling services to the parties even if both parties are unable to pay.

(3) The court or a circuit court commissioner shall direct either or both parties to pay any applicable fee under this section. If either or both parties are unable to pay, the court shall grant a separate judgment for the amount of the fees in favor of the county and against the party or parties responsible for the fees.

(4) The county treasurer shall deposit fees collected under this section in a separate account for the exclusive purpose of providing mediation services and studies under s. 767.11.

History: 1987 a. 355; 1991 a. 269; 2001 a. 61.

NOTE: 1987 Wis. Act 355, which created this section, contains explanatory notes.

814.62 Fees in garnishment, wage earner and small claims actions. The clerk of court shall collect the fees provided in this section. Unless a specific exemption is provided, a governmental unit, as defined in s. 108.02 (17), shall pay fees under this section. The clerk shall collect the following fees:

(1) **GARNISHMENT ACTIONS.** The fee for commencing a garnishment action under ch. 812, including actions under s. 799.01 (1) (d) 2., is \$20. Of the fees received by the clerk under this subsection, the county treasurer shall pay \$12.50 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$12.50 to the appropriation under s. 20.680 (2) (j).

(2) **WAGE EARNER ACTIONS.** The fee for commencing wage earner amortization proceedings under s. 128.21 is \$10.

(3) **SMALL CLAIMS ACTIONS.** (a) In a small claims action under ch. 799, at the time of issuance of a summons or other process in a proceeding not commenced by a summons, the plaintiff shall pay to the clerk of court a fee of \$22.

(b) If a counterclaim or cross complaint is filed under s. 799.02 (1), the person filing the same shall pay a fee equal to the difference between the fee under s. 814.61 (1) (a) and the fee under par. (a).

(c) For all other services of the clerk in a small claims action, the clerk shall collect the fees prescribed in s. 814.61.

(d) 2. Of the fees received by the clerk under par. (a), the county treasurer shall pay \$11.80 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit the \$11.80 to the appropriation under s. 20.680 (2) (j).

3. Of the fees received by the clerk under par. (b), the county treasurer shall pay \$27.20 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$10 of the \$27.20 to the appropriation under s. 20.680 (2) (j).

(e) If any party files a demand for a jury trial in any action under ch. 799, the party demanding the jury trial shall pay a fee equal to the difference between the fee under s. 814.61 (1) (a) and the fee under par. (a), in addition to the fee under s. 814.61 (4).

(4) **MAILING FEE.** For service by mail under s. 799.12, the clerk shall collect \$2 for each defendant to cover the expense of mailing. If service by certified mail return receipt requested is required, the clerk shall collect for each defendant \$2 plus the cost for the certified mailing, rounded up to the nearest dollar.

History: 1981 c. 317; 1983 a. 27; 1985 a. 29; 1987 a. 208, 399; 1989 a. 31, 359; 1991 a. 39; 1993 a. 16; 1995 a. 27; Sup. Ct. Order No. 95–10, 195 Wis. 2d xv (1996).

814.63 Fees in forfeiture actions. (1) (b) In all forfeiture actions in circuit court, the clerk of court shall collect a fee of \$25 to be paid by the defendant when judgment is entered against the defendant.

(c) This subsection does not apply to an action for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), or (br) or (5) or a safety belt use violation under s. 347.48 (2m).

(2) Upon the disposition of a forfeiture action in circuit court for violation of a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district ordinance, except an action for a safety belt use violation under s. 347.48 (2m), the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

(3) In addition to any forfeiture imposed, the defendant shall be required to pay any applicable:

(a) Penalty assessment imposed by s. 757.05.

(ag) Jail assessment imposed by s. 302.46 (1).

(ai) Consumer protection assessment imposed by s. 100.261.

(am) Crime laboratories and drug law enforcement assessment imposed under s. 165.755.

(ar) Domestic abuse assessment imposed by s. 973.055 (1).

(b) Driver improvement surcharge imposed by s. 346.655.

(bg) Enforcement assessment imposed by s. 253.06 (4) (c).

(bm) Uninsured employer assessment imposed by s. 102.85 (4).

(bs) Environmental assessment imposed by s. 299.93.

(c) Natural resources assessment imposed by s. 29.987.

(d) Natural resources restitution payment imposed by s. 29.989.

(e) Wild animal protection assessment imposed by s. 29.983.

(eg) Fishing shelter removal assessment imposed by s. 29.985.

(er) Snowmobile registration restitution payment imposed by s. 350.115.

(f) Weapons assessment imposed by s. 167.31 (5).

(g) Truck driver education assessment imposed by s. 349.04.

(4) In forfeiture actions in which a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district prevails, costs and disbursements shall be allowed to the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district subject only to sub. (2) and such other limitation as the court may direct.

(5) Of the fees received by the clerk under sub. (1) (b), the county treasurer shall pay \$17.50 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$17.50 to the appropriation under s. 20.680 (2) (j).

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130; 1993 a. 16, 167, 313; 1995 a. 27, 227, 349; 1997 a. 27, 248; 1999 a. 9, 72; 2001 a. 16.

A municipality must pay the fee imposed under sub. (2) upon the disposition in a circuit court of a forfeiture action for a municipal ordinance violation. The fee may not be passed on to the defendant. 80 Atty. Gen. 151.

Neither the clerk of court nor the county board has the authority to adopt a nonrefundable processing fee in the absence of a statute specifically providing for the fee. 80 Atty. Gen. 223.

814.634 Fee for court support services. (1) (a) Except for an action for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$52 court support services fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

(b) Notwithstanding par. (a), the clerk of circuit court shall charge and collect a \$130 court support services fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a) or (3) or 814.62 (1) or (2), if the party paying the fee seeks the recovery of money and the amount claimed exceeds the amount under s. 799.01 (1) (d).

(c) Notwithstanding par. (a), the clerk of circuit court shall charge and collect a \$39 court support services fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.62 (3) (a) or (b), or paying a fee under

s. 814.61 (1) (a) or (3) or 814.62 (1) or (2) if the party paying the fee seeks the recovery of money and the amount claimed is equal to or less than the amount under s. 799.01 (1) (d).

(d) The court support services fee is in addition to the other fees listed in this subsection.

(2) The clerk shall pay the moneys collected under sub. (1) to the county treasurer under s. 59.40 (2) (m). The county treasurer shall pay those moneys to the state treasurer under s. 59.25 (3) (p).

History: 1993 a. 16; 1995 a. 27, 201, 417; 2001 a. 109.

814.635 Justice information system fee and special prosecution clerks fee. (1) Except for an action for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$9 justice information system fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3) or (8) (am), 814.62 (1), (2) or (3) (a) or (b) or 814.63 (1). The justice information system fee is in addition to the other fees listed in this section.

(1m) Beginning October 1, 1995, whenever the clerk of circuit court for Milwaukee County charges and collects a fee under sub. (1), he or she shall also charge and collect a \$2 special prosecution clerks fee. The special prosecution clerks fee is in addition to the other fees listed in sub. (1).

(2) The clerk shall pay the moneys collected under subs. (1) and (1m) to the county treasurer under s. 59.40 (2) (m). The county treasurer shall pay those moneys to the state treasurer under s. 59.25 (3) (p).

History: 1987 a. 27; 1989 a. 22; 1991 a. 26, 39; 1993 a. 16; 1995 a. 27, 201; 1997 a. 27; 1999 a. 9.

814.64 Fees on appeal to court of appeals or supreme court. The fees on appeal to the court of appeals and the supreme court are prescribed in s. 809.25 (2).

History: 1981 c. 317.

814.65 Fees of the municipal court. (1) COURT COSTS. In a municipal court action, except an action for violation of an ordinance in conformity with s. 347.48 (2m), the municipal judge shall collect a fee of not less than \$15 nor more than \$23 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons or the action is tried as a contested matter. Of each fee received by the judge under this subsection, the municipal treasurer shall pay monthly \$5 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the municipality.

(2) WITNESS AND INTERPRETER'S FEES. The fees of witnesses and interpreters shall be paid as specified in s. 814.67.

(3) ATTORNEY FEES. A municipal court shall not impose and collect attorney fees.

(4) TAXATION OF FEES AND COSTS. (a) Other than fees specified in sub. (1) and costs specified in par. (b), no fees or costs are taxable by a municipality to a party before a municipal court unless it is directly chargeable to the municipality as a disbursement, such as service of process costs.

(b) If service of process is accomplished by municipal personnel, the cost of the service prescribed under ss. 814.70 and 814.71, subject to any modification applicable under s. 814.705, is taxable regardless of whether a separate disbursement is made to specifically reimburse the municipal employee or agency.

(5) COSTS AND FEES ON APPEAL. On appeal from municipal court, the appellant shall pay the fee prescribed in s. 814.61 (8). The appellant shall also pay a fee of \$10 for the transcript prepared under s. 800.14 (5). Costs shall be as provided in s. 814.08.

History: 1981 c. 317; 1983 a. 107; 1987 a. 181, 389, 399, 403; 1989 a. 22; 1991 a. 26; 1997 a. 27.

814.66 Fees of register in probate. (1) The register in probate shall collect the following fees:

(a) 2. For filing a petition whereby any proceeding in estates of deceased persons is commenced, if the value of the property

subject to administration, less encumbrances, liens or charges, is \$10,000 or less, a fee of \$20 and, if more than \$10,000, a fee of 0.2% of the value of the property subject to administration, less encumbrances, liens or charges. The register in probate may not base a fee under this subdivision upon the value of property that is not subject to administration.

3. The fees shall be paid at the time of the filing of the inventory or other documents setting forth the net value of the property subject to administration in the proceedings, and shall apply to inventories filed in testamentary trusts. The fees fixed in this paragraph shall also be paid in survivorship proceedings, and in the survivorship proceedings the value shall be based on the value of the property passing to the survivors.

(b) 2. For filing a petition for guardianship of the estate under ch. 880 or an application for conservatorship under ch. 880, if the value of the property, less encumbrances, liens or charges, is \$10,000 or less, a fee of \$20 and, if more than \$10,000, a fee of 0.2% of the value of the property, less encumbrances, liens or charges.

3. The fee shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate in the proceedings.

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

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

(e) For filing objections to the probate of a will, \$20, except that this fee may be waived by the court when objection is filed by a guardian ad litem or attorney, or attorney-in-fact, for a person in the military service. The court may order a refund of the fee to the objector from the assets of the estate.

(f) For receiving a will for safekeeping, except under s. 856.05 (1), \$10.

(g) For each certificate issued by the registers in probate or circuit judges, \$3.

(h) 1. Except as provided in subd. 2., for copies, certified or otherwise, of records or other papers in the custody and charge of registers in probate, or for the comparison and attestation of copies not provided by the registers, \$1 per page.

2. For copies of any court document requested by the state public defender, other than a transcript, a fee equal to the actual, necessary and direct costs of copying.

(i) For filing claims against estates, \$3. The \$3 fee shall be added on to the amount of the claim and may be recovered as part of the claim.

(j) For searching files or records to locate any one action when the person requesting the search does not furnish the case number of the action, or to ascertain the existence or nonexistence of any instrument or record in the custody of the clerk of circuit court, \$4.

(k) For receiving a power of attorney for health care instrument for safekeeping, as provided under s. 155.65 (1), \$8.

(L) For receiving a declaration for safekeeping, as provided under s. 154.13 (1), \$8.

(m) For filing a petition under s. 880.155, whether in a guardianship or temporary guardianship proceeding or to commence an independent action, \$60.

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

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

(d) Proceedings to administer assets subsequent to entry of final judgment in an estate are subject to fees as separate proceed-

ings. The fees shall not be less than those which would have been chargeable if the assets had been included in the original proceedings.

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

(3) The register in probate shall, on the first Monday of each month, pay into the office of the county treasurer all fees collected by him or her and in his or her hands and still unclaimed as of that day. Each county treasurer shall make a report under oath to the state treasurer on or before the 5th day of January, April, July and October of all fees received by him or her under sub. (1) (a) to (f) up to the first day of each of those months and shall at the same time pay 66.67% of the fees to the state treasurer for deposit in the general fund. Each county treasurer shall retain the balance of fees received by him or her under this section for the use of the county.

History: 1981 c. 317; 1985 a. 329; 1989 a. 56; 1991 a. 220, 281; 1993 a. 160; 1995 a. 27, 38, 224; 1997 a. 83; 2001 a. 16.

The “fee” under sub. (1) based on the value of the estate is in reality a tax and does not violate constitution. *Treiber v. Knoll*, 135 Wis. 2d 58, 398 N.W.2d 756 (1987).

A fee is not collected under sub. (1) (a) upon the filing of the inventory for a testamentary trust. *Trust Estate of Rice*, 187 Wis. 2d 658, 523 N.W.2d 168 (Ct. App. 1994).

814.67 Fees of witnesses and interpreters. (1) The fees of witnesses and interpreters shall be as follows:

(a) For attending before a municipal judge, an arbitrator, or any officer, board or committee:

1. For witnesses, \$5 per day.
2. For interpreters, \$10 per one-half day or such higher fees as the municipality or county board may establish.

(am) For witnesses attending before a circuit court, \$16 per day.

(b) For attending before the court of appeals or the supreme court:

1. For witnesses, \$16 per day.
2. For interpreters, a fee determined by the supreme court.

(bg) For interpreters assisting the state public defender in representing an indigent in preparing for court proceedings, \$35 per one-half day.

(c) For traveling, at the rate of 20 cents per mile going and returning from his or her residence if within the state; or, if without the state, from the point where he or she crosses the state boundary to the place of attendance, and returning by the usually traveled route between such points.

(2) A witness or interpreter is entitled to fees only for the time he or she is in actual and necessary attendance as such; and is not entitled to receive pay in more than one action or proceeding for the same attendance or travel on behalf of the same party. A person is not entitled to fees as a witness or interpreter while attending court as an officer or juror. An attorney or counsel in any cause may not be allowed any fee as a witness or interpreter therein.

History: 1981 c. 317; 1987 a. 27; 1995 a. 27; 2001 a. 16.

814.68 Fees of supplemental court commissioners.

(1) SUPPLEMENTAL COURT COMMISSIONERS. A supplemental court commissioner appointed under s. 757.675 (1) shall collect 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 supplemental court commissioner. This paragraph does not apply to testimonial proceedings or depositions taken before a supplemental court commissioner.

(b) For the following duties performed by a supplemental 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 supplemental court commissioner is authorized to

grant and for attendance upon any motion or an official act to be done by the supplemental 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.

(2) SUPPLEMENTARY EXAMINATIONS. For attendance upon an examination under ch. 816, a supplemental court commissioner shall collect a fee of \$15 to be paid upon the issuance of the order under s. 816.03 (1). The fee shall be returned in any case where it appears by affidavit filed that the order was not served upon the judgment debtor. This fee is the only fee a supplemental court commissioner is entitled to for proceedings under ch. 816.

History: 1981 c. 317; 2001 a. 61.

814.69 Fees of court reporters; transcripts. (1) A court reporter shall collect the following fees:

(a) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per 25–line page for the original and 50 cents per 25–line page for the duplicate. Except as provided in s. 967.06, the fee shall be paid by the county treasurer upon the certificate of the clerk of court.

(b) For a transcript under s. 757.57 (5), a fee from the party requesting the transcript at the rate of \$2.25 per 25–line page for the original and 50 cents per 25–line page for each copy. If the request is by the state or any political subdivision thereof, the fees of the reporter shall be at the rates provided in par. (a).

(bm) If a party requests that a transcript under s. 757.57 (5) be prepared within 7 days after the request and the transcript is not required by supreme court rule or statute to be prepared within that 7–day period, a fee in addition to the fee under par. (b) of 75 cents per 25–line page for the original and 25 cents for each copy. The fee under this paragraph does not apply to a request made by the state or a political subdivision of the state.

(c) 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.

(d) 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 the left margin.

History: 1981 c. 317; 1985 a. 29; 1985 a. 332 s. 253; 1995 a. 27; 1997 a. 35, 237; 2001 a. 16.

Counties are not required to provide free copy machine services to court reporters who collect fees under sub. (2) for furnishing transcripts to parties. 79 Atty. Gen. 157.

County employees who perform court reporting functions are “court reporters” under this section and may personally retain fees collected hereunder. The county may take the fees into account in setting salary structures. 81 Atty. Gen. 7.

814.70 Fees of sheriffs. The sheriff shall collect the fees under this section. The fees are set as follows, unless a higher fee is established under s. 814.705:

(1) SERVICE OF PROCESS. For each service or attempted service of a summons or any other process for commencement of an action, a writ, an order of injunction, a subpoena, or any other order, \$12 for each defendant or person. If there is more than one defendant or person to be served at a given address, \$6 for each additional defendant or person. No fee charged under this subsection in any action commenced under s. 813.12, 813.122, or 813.123 may be collected from a petitioner under s. 813.12, 813.122, or 813.123. The fee charged under this subsection in any action commenced under s. 813.12, 813.122, 813.123, or 813.125 shall be collected from the respondent under s. 813.12, 813.122,

or 813.123 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4), 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4). No fee charged under this subsection in any action commenced under s. 813.125 may be collected from a petitioner under s. 813.125 if the petition alleges conduct that is the same as or similar to conduct that is prohibited by s. 940.32 or that is listed in s. 813.12 (1) (am) 1. to 6. If no fee is collected under this subsection from a petitioner under s. 813.125, the fee charged under this subsection in any action commenced under s. 813.125 shall be collected from the respondent under s. 813.125 if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.125 (3) or (4).

(2) EXECUTION ON JUDGMENT. For serving an execution on a judgment demanding payment thereof or other writ not provided for, \$12.

(3) For travel in serving any summons, writ or other process, except criminal warrants, and except that a fee under this subsection in any action commenced under s. 813.12, 813.122, or 813.123 may not be collected from a petitioner but shall be collected from the respondent if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4), 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4), and except that a fee under this subsection in any action commenced under s. 813.125 may not be collected from a petitioner if the petition alleges conduct that is the same as or similar to conduct that is prohibited by s. 940.32 or that is listed in s. 813.12 (1) (am) 1. to 6. but shall be collected from the respondent if he or she is convicted of violating a temporary restraining order or injunction issued under s. 813.125 (3) or (4):

(a) In counties having a population of less than 500,000, 25 cents for each mile actually and necessarily traveled.

(b) In counties having a population of 500,000 or more, \$4 for each party to be served in each action. Only one charge may be imposed if there is more than one person to be served at a given address.

(4) TRAVEL; CRIMINAL PROCESS. For travel in serving any criminal process:

(a) In counties having a population of less than 500,000, 25 cents per mile.

(b) In counties having a population of 500,000 or more, \$4 for each person served within the county from which process issued, or 25 cents per mile if served outside the county.

(c) The actual and necessary disbursements for board and conveyance of the prisoner.

(5) COLLECTION OF MONEY. For collecting and paying over all sums upon any execution, writ or process for the collection of money, 10% on the first \$300; 5% on the next \$300 or any part thereof; and 3% on any excess over \$600; but the whole fee may not exceed \$60.

(6) COPIES. (a) Except as provided in par. (b), making a copy of any bond, undertaking, summons, writ, complaint or other paper served or taken, when required by law or demanded by a party, and if not furnished by a party to the action or attorney, \$1 per page.

(b) Making a copy of any bond, undertaking, summons, writ, complaint or other paper served or taken, when requested by the state public defender, a fee equal to the actual, necessary and direct costs of copying.

(7) ADVERTISING PERSONAL PROPERTY. Advertising goods and chattels for sale upon execution, writ or process, \$1.50. If there is more than one execution, writ or process in the hands of the

sheriff against the same defendants, there shall be only one advertising fee charged in the whole, which shall be on the execution having priority.

(8) SEIZURE OF PROPERTY; EVICTIONS. For serving any writ or other process with the aid of the county, \$8; and \$10 per hour for each deputy assigned to inventory the property when seizing property on attachment, replevin, execution or evicting on a writ of restitution or writ of assistance, plus all necessary expenses incurred thereby.

(9) SALES OF REAL ESTATE. (a) A fee of \$50, of which \$25 shall be prepaid and nonrefundable, for all necessary activities of the sheriff in connection with the sale of real estate by the sheriff or other officers, under any judgment or order of court, and making all the necessary papers and notices, including but not limited to:

1. Drawing an advertisement of real estate.
2. Issuing every certificate of sale of real estate.
3. Drawing, executing and acknowledging a deed pursuant to a sale of real estate.
4. Posting notices of sheriff's sale.
5. Recording a certificate of sale with the register of deeds.

(b) For travel in making the sale, to be computed from the courthouse, 20 cents per mile going and returning.

(10) PERSONAL PROPERTY; POSSESSION AND STORAGE. All necessary expenses incurred in taking possession of any goods or chattels and preserving the same as shall be just and reasonable in the opinion of the court.

(11) PRINTING ADVERTISEMENTS. All fees allowed by law and paid to any printer for any advertisement required to be published by the sheriff.

(12) NOTICES OF SALE. For the posting of notices of sale of personal property or posting any other notice and making a return thereon, \$4 for the first posting and \$2 for each additional posting. **History:** 1981 c. 317; 1983 a. 92; 1987 a. 181; 1993 a. 301, 319; 1995 a. 27, 225, 306, 417; 1999 a. 71, 186; 2001 a. 109.

Fees for mileage may only be collected if service is successful. 73 Atty. Gen. 106.

814.705 Governing body may establish higher fees.

(1) With respect to fees enumerated in s. 814.70 (1), (2), (3) (a) and (b) and (4) (a) and (b):

(a) A county board may establish a higher fee for collection by the sheriff.

(b) A city council may establish a higher fee for collection by the city constable and city police.

(c) A village board may establish a higher fee for collection by the village marshal and village constable.

(d) A town board may establish a higher fee for collection by the town constable or town police.

(2) With respect to sheriff's fees for the sale of real estate under s. 814.70 (9), the county board may establish a higher fee in an amount not to exceed \$150.

History: 1987 a. 181; 1993 a. 246; 1997 a. 27.

814.71 Fees of city police, constables and village marshals. City police, constables and village marshals shall collect the same fees as those prescribed for sheriffs in s. 814.70 for similar services subject to any modification applicable under s. 814.705.

History: 1981 c. 317; 1987 a. 181.

814.72 Fees of appraisers. For appraisals under s. 815.19, each appraiser shall collect a fee of \$8, plus \$10 per hour. The fee shall be paid by the officer and returned as a disbursement on the writ of attachment or execution.

History: 1981 c. 317.