

CHAPTER 255.

JURORS.

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255.01 Qualifications of jurors. All citizens of the United States who are qualified electors of this state, who are possessed of their natural faculties, who are not infirm or decrepit, who are esteemed in their communities as men of good character, approved integrity and sound judgment, and who are able to read and write the English language understandingly, shall be liable to be drawn as jurors, except as otherwise provided in the statutes.

Note: A juror, whose sister married a him to sit in trial of the action for alienat-cousin of plaintiff's wife, was not so closely ing her affections. *Maahs v. Schultz*, 207 W related to the latter as alone to disqualify 624, 242 NW 195.

255.02 Who exempt. The following persons shall be exempt from serving as jurors:

(1) All officers of the United States; elective state officers; members and officers of the legislature during the session thereof; judges and clerks of courts of record; city and county officers; constables; officers and employes of the several state institutions; officers of fire departments and active members of fire companies organized according to law; members of Wisconsin National Guard, and members thereof who are honorably discharged after five years' service, or by reason of injury received in the line of duty.

(2) Attorneys and counselors at law; practicing physicians; surgeons; dentists; ministers of the gospel or of any religious society; the president and cashier of any state or national bank.

(3) The president, professors and instructors of the university and their assistants; and of the several colleges and incorporated academies; teachers in normal, public or private schools.

(4) One miller to each gristmill; one head sawyer and engineer in each steam sawmill and shingle mill; one foreman and engineer in each factory and machine shop.

(5) One dispensing druggist in each prescription drug store; one embalmer holding license issued by the state board of health in each undertaking establishment.

(6) Telegraph operators, superintendents, conductors, collectors, engineers, firemen, brakemen, and station agents of any railroad, express or canal company, while in actual regular employment as such; one ferryman to each licensed ferry.

(7) All persons more than sixty years of age.

(8) All persons who have been convicted of any infamous crime.

(9) Every person drawn and summoned and having served as a grand or petit juror at any regular term of the court of record shall be disqualified from serving again as a grand or petit juror in the same county for one year thereafter, except he shall be summoned on a special venire or as a talesman.

255.03 Jury commissioners. (1) Petit jurors for all circuit courts, the municipal courts of Milwaukee and Racine counties, the district court of the city and county of Milwaukee, the superior court of Douglas county, and for all other courts of exclusive civil jurisdiction, except county courts, shall be drawn and obtained as prescribed in this and sections 255.04 to 255.07 by 3 commissioners appointed in each county by the circuit judge, except that in counties where there is more than one court within this section such

commissioners shall be appointed by the joint action of all the judges of such courts. The persons so appointed shall be freeholders of the county and possess all of the qualifications required by section 255.01, and shall be known as jury commissioners. Their duties shall be as hereinafter prescribed. Their terms shall be 3 years; but the judge or judges shall, in the first instance, appoint one commissioner for one year, one for 2, and one for 3 years; and thereafter shall appoint one for each year for 3 years from the first day of July. Vacancies shall be filled for the unexpired term. Each commissioner shall take and file an official oath. Two commissioners shall constitute a quorum.

(2) In all counties having a population of over one hundred thousand inhabitants, each commissioner shall be paid such salary as shall be fixed by the county board, and also one dollar for each meeting of the commission which he attends in any city or incorporated village in the county, other than the city in which the courthouse is located; provided, that the payments last mentioned shall not exceed two dollars per annum to each commissioner for attendance in any one city or village and shall be made only upon the presentation of an affidavit of the commissioner, who is to receive such payment in which there shall be stated the cities and villages in which he attended such meetings and the dates of such attendance.

(3) In all counties having a population not exceeding one hundred thousand inhabitants, according to the last federal census, each commissioner shall receive four dollars for each day actually spent in official service, and ten cents for each mile actually traveled in attending any and all meetings of the commissioners in the discharge of their duties; such compensation and mileage shall be paid by the county treasurer on the order of the clerk of said court, countersigned by the circuit judge. Said clerk shall furnish, at the expense of the county, all articles, books, postage stamps and stationery required by the commissioners. Commissioners already appointed by the circuit judge in counties having more than one court and jurors selected by them shall continue to be commissioners and jurors respectively for all such courts until others are appointed or selected. [1945 c. 540]

Note: Under 255.03 (3) jury commission- 14.71 (6) (f) is inapplicable. 27 Atty. Gen. ers are entitled to mileage only for one 153. round trip in attending meeting. Section

255.04 Lists; number; how drawn. (1) Such commissioners shall provide from time to time, as may be necessary, one list of names to be drawn from the body of the county to serve as jurors in each of the courts specified in section 255.03; and in making such lists, shall put thereon only the names of such persons as they believe to be possessed of the qualifications prescribed in section 255.01; provided, however, that in counties where there is more than one court within the provisions of section 255.03 of the statutes, the judges thereof, by the joint action of a majority of such judges, may prescribe and, as deemed necessary, amend directions and rules, in relation to the providing of such lists, and such directions and rules shall be followed by such commissioner in providing such lists. The number of names to be placed on such list shall be determined by the judges of said several courts from time to time by order filed in the office of the clerk of the circuit court. Such lists shall be furnished by said commissioners to the clerks of the respective courts, who shall write the names thereon on separate slips of paper, each in the same manner as near as may be, and fold each slip so that the name shall not be visible, and deposit said slips in a box, containing but one compartment, in the presence of said commissioners, from which they shall be drawn in the following manner, viz.:

(2) At least fifteen and not more than thirty days before the sitting of either such court at which a jury is required to attend, the clerk thereof shall, in the presence of said commissioners, proceed to draw the names of thirty-six jurors from said box to serve as petit jurors in said court; such names, as they are drawn, shall be entered upon a suitable record book to be kept by said clerk, and a list of the names so provided shall be kept by him, and a separate list thereof by at least one of the commissioners. If the name of any person known to be no longer liable to jury duty in said county be drawn, such name shall be cast out and the name of another juror drawn to take his place.

(3) No advertisement of the time and place of drawing need be given, but the clerk shall fix the date of drawing and give five days' notice thereof to each commissioner.

(4) These provisions shall be applicable to any court of exclusive civil jurisdiction in a county containing a population of over one hundred and fifty thousand, which requires a jury, except that if such court shall be held by two judges, they may, by an order made and filed with the clerk of such court, require that the names of more than thirty-six persons be so drawn to serve as petit jurors therein.

(5) The names of any persons on said lists who have become disqualified to act as jurors may be replaced in the same manner. Provided, however, that the judges of the circuit court in any county containing a population of over one hundred and fifty thousand may, from time to time by order and as they shall deem expedient, provide for the number of

jurors to be drawn for such circuit court, the length of service, and the manner in which they shall be required to serve in the different branches of such circuit court.

(6) For the purpose of enabling such commissioners, in counties where there is more than one court within the provisions of section 255.03, to ascertain the qualifications of persons whose qualifications for jury service such commissioners are considering, such commissioners, whenever such person has failed within thirty days to reply to such inquiries as the commissioners may have made of him by mail, may issue a subpoena to compel the attendance of such person before the commission to answer questions which they may put to him touching his qualifications to serve as a juror; and in case of disobedience on the part of such person to comply with such subpoena, or on the refusal of any person to answer such matters as to which he may be lawfully interrogated by the commission, it shall be the duty of the circuit court of such county, or the judge thereof, on the application of such commission, to compel obedience by attachment proceedings for contempt as in cases of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein; and upon such proceedings, the district attorney of such county shall appear for such commission and shall conduct and prosecute such proceedings. Such subpoena shall be served in the usual manner by the sheriff of such county without receiving any fee for service or for travel in serving the same; and the person so subpoenaed shall not be entitled to any fee for attendance or travel.

Note: When selecting names of electors to serve as jurors it is improper for the commissioners to consider sex but if the commissioners do give that fact consideration it is not an irregularity of which a litigant can complain. *Petition of Salen, 231 W 489, 286 NW 5.*

The fact that the jury was selected from a panel consisting of only 33 jurors, instead of the 36 required by statute, was not prejudicial error, it being within the discretion of the trial judge to determine the necessity of drawing additional names. *State v. Zuehlke, 239 W 111, 300 NW 746.*

255.05 Insufficient number of jurors. Whenever at any term of either such court there shall be a partial or entire absence of jurors of the regular panel, from any cause whatever, the court may direct that the clerk, in his presence, immediately draw from the names so furnished and provided such number of names of persons as may be required to serve as jurors during the term; and whenever there shall be a deficiency of jurors of the regular panel at any time during the term the court may order a sufficient number to be so drawn to fill the regular panel, or a less or larger number as the public interest and the condition and character of the business shall require. Whenever it becomes apparent to the court or the trial judge that the regular panel will not be sufficient to provide a jury for a particular cause to be tried at the current or next term of court, the court or judge may direct the clerk to draw and summon a sufficient additional number of jurors, specifying the number. Whenever the list of names furnished any such court shall have been depleted the commissioners shall supply other names so that there will be not less than 150 nor more than 500 names in the box at the time any drawing of jurors takes place. Such names shall be written on slips of paper which shall be put into the box as hereinbefore provided. [*Supreme Court Order, effective April 1, 1948*]

255.06 Bystanders may be called, when. Whenever a sufficient number of jurors, so drawn and summoned, cannot be obtained for the trial of any cause the court may cause persons qualified to serve as jurors to be returned from the bystanders or from the county at large or from the persons named in the list provided by the jury commissioners under section 255.04 to serve as jurors, for the trial thereof and make the proper and necessary orders therefor.

255.07 Exemption; how jurors excused. Any juror whose name has been drawn on any regular panel and whom the court has not excused from service shall be exempt from jury service for one year next ensuing. Any such court may, whenever it shall seem proper and necessary so to do, having regard to the length of the term thereof and an equitable distribution of the duties of jurors, excuse any panel or number of jurors after a service of two weeks or more and order another panel or additional jurors to be drawn as hereinbefore provided to complete the business of the term.

255.08 Venires, when and how issued. The clerk shall, at least twelve days before the first day of the court, issue and deliver to the sheriff or undersheriff of said county a venire for the petit jury, under the seal of the court, commanding him to summon the persons so drawn as jurors to appear before the said court at or before the hour of eleven o'clock in the forenoon on the first day of the term thereof or at such other time as may be fixed by law or shall have been fixed by the presiding judge of said court, to serve as petit jurors. And when ordered to draw a grand jury, as provided by law, he shall in like manner issue and deliver a venire commanding the sheriff or undersheriff to summon the persons so drawn as grand jurors to appear before the said court at the time specified in the order of said judge.

255.09 Jurors; how summoned; sheriff's return. The sheriff or undersheriff shall summon the persons named in such venires to attend such court as grand or petit jurors, as the case may be, by giving personal notice to each person or by leaving a written notice at his place of residence with some person of proper age or by sending a written notice to each person by registered mail. He shall return such venires to the court at the opening thereof, specifying those who were summoned and the manner in which each person was notified. Petit jurors shall be summoned at least four days before the sitting of the court. All special venires shall be executed by the officer to whom delivered according to the command thereof.

255.10 Jurors in courts not within section 255.03. Jurors for all courts of record not within section 255.03 shall be drawn from a list, furnished by the sheriff or other proper officer, containing the names of thirty-six persons qualified to serve as jurors in circuit courts; provided, that this section shall not apply to any such court the method of drawing jurors for which is prescribed by any law applicable to it and which it is practicable to follow.

255.11 Grand jurors. Grand jurors shall not be summoned to attend the sittings of any court unless the judge thereof shall make and file with the clerk an order in writing directing such jury to be summoned, and specifying the time at which the jurors shall appear, the number of days' notice which shall be given them, and the number of jurors, not less than fifteen nor more than seventeen.

255.12 Grand jurors, by whom selected. All persons hereafter to serve as grand jurors shall be selected by the jury commissioners now authorized by law to select petit jurors.

255.13 List of jurors, how prepared. On or before the last Monday of November in each year said commissioners shall select, from the electors of the county who possess the necessary legal qualifications for jury duty as prescribed in section 255.01, the names of not less than seventy-five nor more than one hundred and fifty persons to serve as grand jurors in the county for the ensuing year, and to make a list of the same. Immediately after such grand jury list has been completed said commissioners shall enter the names of the persons composing it upon a suitable record book kept for the purpose and shall certify over their respective signatures that such list is correctly entered and recorded therein and shall thereupon deposit such record book with the clerk of the court of such county who shall securely keep the same so that the grand jury list entered and recorded therein as aforesaid shall not become known. If for any cause such list shall not be made as aforesaid before the last Monday in November in each year said commissioners may make out the same at any time thereafter.

Note: See annotation to 255.04, citing *Petition of Salen*, 231 W 489, 286 NW 5.

255.14 Drawing of jury. Whenever any court or judge thereof shall direct a grand jury to be summoned as provided by section 255.11, said commissioners shall write the names of all the persons selected as aforesaid on separate pieces of paper, each in the same manner as nearly as may be, fold the same, so that the name written thereon shall not be visible, and deposit such pieces of paper in a box containing but one compartment. Thereupon said box shall be thoroughly shaken and the names of seventeen persons shall be drawn therefrom, one by one, in the presence of said commissioners and the presiding judge of the court ordering said grand jury to be summoned, by a child under ten years of age theretofore selected for such purpose by such judge, and the seventeen persons whose names are first drawn shall be the grand jury for said court until said grand jury shall be discharged by the presiding judge of said court. Their names shall forthwith be entered in said record book and two lists thereof shall immediately be certified by said commissioners, one to the judge and the other to the clerk of the court at which such grand jury is required to attend.

255.15 Duty of jurors; deficiency, how filled. Such grand jurors so selected shall be summoned to attend the sittings of the court in the same manner as is now provided by law. In case of a deficiency of grand jurors for any cause the court may order to be drawn in the manner aforesaid from the box containing the names of persons selected to serve as grand jurors a sufficient number of names to fill the panel.

255.16 Juror not to serve more than once in three years. Said jury commissioners shall not place upon the list of grand jurors, provided for by section 255.13, the name of any person who shall have served as a grand juror of said county at any time within three years prior thereto.

255.17 Report progress and return indictments. Said grand jury so selected may report progress and return indictments to the court from time to time during its session and until discharged.

Note: The report of the grand jury criticizing the practice of an unnamed member of the city attorney's staff in accepting retainers was unauthorized, and should be stricken from the court files. In re Grand Jury Report; Petition of Williams, 204 W 409, 235 NW 789.

Although the court should instruct a grand jury, the failure to do so does not invalidate the indictment. The weight or sufficiency of the evidence before a grand jury to warrant it in returning an indictment is not reviewable upon a plea in abate-

ment or a motion to quash the indictment. If it be made to appear that there was no evidence before a grand jury, or the sole evidence upon which it acted was illegal, the indictment may be quashed. A grand jury is warranted in returning an indictment where it has before it competent, credible evidence which excites in its mind after careful consideration an honest reasonable belief that the accused committed the offense charged. State v. Lawler, 221 W 423, 267 NW 65.

255.18 Stenographic reporter; oath; salary; assistant. (1) Every grand jury shall have the power in addition to the appointment of one of their own number to be their clerk, as now provided by law, when ordered by the judge ordering such grand jury, to employ a competent stenographic reporter to attend all their sessions and to take down in shorthand a complete report of all proceedings had before them, and such stenographic notes shall, as soon as convenient, be transcribed into longhand by such reporter and deposited with the attorney-general or with the district attorney of the county or both as the grand jury may direct.

(2) Before assuming the duties herein prescribed such reporter shall make and file an oath faithfully to report and transcribe all the proceedings before such grand jury and to keep inviolate the secrecy required by law to be kept relative to such proceedings. He shall be paid out of the county treasury of the county in which the service is rendered such sum as shall be audited and allowed by the court ordering said grand jury, not to exceed ten dollars per day for each day actually engaged before the grand jury as such stenographic reporter, and for transcribing his notes the fees prescribed by law for similar services in courts of record. Such stenographic reporter may at his own expense employ the assistance of a competent typewriter operator in transcribing his notes of the testimony and proceedings of said grand jury, but before entering upon his duties hereunder such typewriter operator shall be required to make and file an oath similar to that required of such reporter. The accounts of such stenographic reporter shall be approved by the presiding judge of the court ordering said grand jury.

255.19 Oath of grand jurors. Whenever a grand jury is summoned the clerk of the court shall prepare a list of the names of the persons returned as grand jurors, and when the jury is to be impaneled two persons on the list shall be first called and the following oath shall be administered to them: You, as grand jurors of this inquest for the body of this county of . . . , do solemnly swear (or affirm, as the case may be) that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the counsel of the state of Wisconsin, your fellows and your own, you shall keep secret; you shall present no man for envy, hatred or malice, neither shall you leave any man unrepresented for love, fear, favor, affection or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you God. The other jurors shall then be called in such divisions as the court may deem proper and the following oath shall be administered to them: The same oath which your fellows have taken on their part you and each of you, on your behalf, shall well and truly observe and keep; so help you God.

255.20 Objections to grand jurors. Any person held to answer to any criminal charge may object to the competency of any one summoned to serve as a grand juror before he is sworn, on the ground that he is a prosecutor or complainant upon any charge against such person or that he is a witness on the part of the prosecution and has been subpoenaed or been bound in a recognizance as such; and if such objection be established the person summoned shall be set aside.

255.21 Oaths to witnesses. The foreman of every grand jury, district attorney or other prosecuting officer who shall be before them shall have authority to administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before such jury for the purpose of testifying in any matter of which they have cognizance; and the foreman shall return to the court a list, under his hand, of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed by the clerk.

255.22 Grand jury may appoint a clerk. The grand jury may appoint one of their number to be their clerk, to preserve minutes of the proceedings before them, which minutes shall be delivered to the attorney-general or district attorney when the grand jury shall so direct.

255.23 District attorney, when to attend. Whenever required by the grand jury it shall be the duty of the district attorney of the county to attend them for the purpose of

examining witnesses in their presence or of giving them advice upon any legal matter, and to issue subpoenas and other process to bring up witnesses.

Note: An erroneous instruction given by the court to a grand jury is not ground for quashing an indictment or sustaining a plea in abatement, in view of the fact that a grand jury merely presents an accusation, is not bound by instructions of the court as to the law, may be advised by the district attorney, and that the secrecy of the proceedings of a grand jury makes it impossible for the court to determine whether in a particular case an erroneous instruction was prejudicial. *State v. Lawler*, 221 W 423, 267 NW 65.

255.24 Twelve to concur. No presentment shall be made nor any indictment found by any grand jury unless at least twelve of their number shall concur therein.

255.25 Indictment not to be disclosed. No grand juror or officer of the court, if the court shall so order, shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

Note: An accused is not entitled to inspect the minutes of the grand jury to enable him to prepare and make his defense, pleas and motions. Inspection of the minutes of the grand jury is not allowed except in the instances provided for by legislation and permitted by the courts when necessary to protect the rights of citizens in the administration of justice. *Steenland v. Hoppmann*, 213 W 593, 252 NW 146.

255.26 Votes not to be disclosed. No grand juror shall be allowed to state or testify in any court in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

255.27 Testimony, when may be disclosed. Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offense.

255.28 May serve twice at same term. When the grand jury attending any court shall have been dismissed before the court is adjourned without day they may be summoned to attend again in the same term, at such time as the court shall direct, for the dispatch of any business that may come before them.

255.29 Fine for nonattendance. If any person lawfully summoned to attend as a juror in any court of record shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned and shall be paid into the county treasury.

255.30 Jurors, how paid. The clerk of the court whenever a juror shall be discharged, or at the end of each term of court, or within ten days thereafter, shall make out a certificate to each juror attending the court, certifying the number of days attendance, the number of miles traveled, and the amount of compensation due him, and every such juror shall make affidavit thereto and receipt for same, before it shall be delivered to him, and thereupon the county treasurer shall pay the amount thereof out of the county treasury. In counties having a population of five hundred thousand or more and containing an entire judicial circuit, for which more than one judge is provided by law, such affidavit may be executed and sworn to before the calendar clerk or one of his assistants.

255.31 Juror's fees and mileage. Every grand and petit juror summoned upon any venire shall receive \$4 for each day's actual attendance upon any circuit court, county court or municipal court from either of which an appeal in such action, as may be for trial, must be taken directly to the supreme court, and 4 cents for each mile actually traveled each day in going and returning by the most usual route; but shall be paid for no day when the court is not in session unless specially ordered by the presiding judge. [1945 c. 146]

255.32 Talesman to receive four dollars per day. Every talesman, summoned and acting as a juror, shall receive the same compensation as jurors, as provided in section 255.31.