

CHAPTER 37

AN ACT to renumber and amend 59.28 (2); to amend 59.28 (1), 269.46 (1), 269.465, 270.33, 291.17 (last unnumbered paragraph), 299.08 and 299.16 (1); and to create 59.28 (2) (b), 299.215, 299.225 and 299.255 of the statutes, relating to certain fees, charges and procedure in county court small claims type actions.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 59.28 (1) of the statutes is amended to read:

59.28 (1) For serving a summons or any other process by which action shall be commenced, or writ or order of injunction or other order, and making a return thereon, for one defendant, \$2; for each additional defendant, \$1; for attempting to serve, one-half of the foregoing fees. *In counties having a population of 500,000 or more, the full fee shall be charged for attempted service.*

SECTION 2. 59.28 (2) of the statutes is renumbered 59.28 (2) (a) and amended to read:

59.28 (2) (a) *Except in counties having a population of 500,000 or more, traveling in making service of any summons, writ or other process, except upon criminal warrants, 10 cents per mile for each mile actually traveled going and returning \* \* \*. The sheriff shall serve all process, orders and papers in any one action or proceeding which may then be in his hands for service, which can be served at the same time and upon all persons upon whom service is required who can be served in the same journey, and he shall be entitled to one mileage for the greatest distance actually traveled by him to make such service, and no more \* \* \*. For summoning grand and petit jurors no traveling fees shall be charged for more than the distance actually and necessarily traveled in summoning such jurors.*

SECTION 3. 59.28 (2) (b) of the statutes is created to read:

59.28 (2) (b) *In counties having a population of 500,000 or more, the charge for travel for the service or attempted service of process or pleading shall not exceed 60 cents for each party to be served in each action. If there is more than one person to be served at a given address, only one charge for travel shall be imposed. For summoning grand and petit jurors, no travel expense shall be charged for more than the distance actually and necessarily traveled in summoning such jurors.*

SECTION 4. 269.46 (1) of the statutes is amended to read:

269.46 (1) *The court may, upon notice and just terms, at any time within one year after notice thereof, relieve a party from a judgment, order, stipulation or other proceeding against him obtained, through his mistake, inadvertence, surprise or excusable neglect and may supply an omission in any proceeding. In addition to the required affidavits, all motions to vacate a judgment entered upon default or cognovit and to obtain a trial upon the merits shall be accompanied by a proposed verified answer disclosing a defense.*

SECTION 5. 269.465 of the statutes is amended to read:

269.465 Whenever it \* \* \* *is* necessary in any petition or affidavit to swear to the advice of counsel, a party shall, in addition to what has usually been required, swear that he has fully and fairly stated the case to his counsel and shall give the name and \* \* \* *address* of such counsel.

SECTION 6. 270.33 of the statutes is amended to read:

270.33 *Except in actions and proceedings under ch. 299*, upon a trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk within 60 days after submission of the cause, and shall state separately the facts found and the conclusions of law thereon; and judgment shall be entered accordingly.

SECTION 7. 291.17 (last unnumbered paragraph) of the statutes is amended to read:

291.17 (last unnumbered paragraph) Therefore, you are hereby commanded that, taking with you the force of the county, if necessary, you cause the said ----- to be immediately removed from the aforesaid premises and the said ----- to have peaceable restitution of the same. You are also hereby commanded that of the goods and chattels of the said ----- within said county you cause to be levied, and the same disposed of according to law, to be paid to the said ----- the sum of -----, being the costs taxed against the said -----, for the said -----, at the court aforesaid, together with \* \* \* *fifty* cents for this writ, and also the sum of ----- dollars, adjudged as aforesaid, to be returned to the undersigned, and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at -----, this ----- day of -----, 19---

-----, Justice.

SECTION 8. 299.08 of the statutes is amended to read:

299.08 At the time of issuance of every summons or other process in a proceeding not commenced by a summons, the plaintiff shall pay to the clerk of said court, a clerk's fee of \$2 and a *suit tax of \$1 as prescribed by s. 271.21*, except that a municipality need not advance \* \* \* *these fees*, but shall be exempt from payment of such \* \* \* *fees* until the defendant pays costs pursuant to \* \* \* *s. 299.25*.

SECTION 9. 299.16 (1) of the statutes is amended to read:

299.16 (1) In proceedings in rem or quasi in rem no judgment shall be \* \* \* *entered* against \* \* \* *a* defendant for an amount in excess of the value of the res unless based on service as provided in s. 299.13 (2), or unless the defendant makes a general appearance.

SECTION 10. 299.225 of the statutes is created to read:

299.225 DISMISSAL OF PENDING ACTIONS. The court may without notice dismiss any action or proceeding, in which issue has not been joined, which is not otherwise disposed by judgment or stipulation and order within 6 months from the original return date.

SECTION 11. 299.255 of the statutes is created to read:

299.255 SMALL CLAIMS FEES. The clerk shall collect the following fees in actions and proceedings under this chapter:

(1) EXECUTIONS; WRIT OF RESTITUTION. For issuing an execution or writ of restitution, 50 cents.

(2) TRANSCRIPTS. For issuing or docketing a transcript, \$1.

(3) **CERTIFIED COPIES.** For certified copies of any document, 50 cents per page if prepared by the clerk, 25 cents per page if only compared by the clerk, but in no case less than \$1. If a photostatic copy is furnished by the applicant the fee for certifying the same shall be \$1 regardless of the number of pages. There shall be no additional charge made for the certificate.

SECTION 12. 299.215 of the statutes is created to read:

**299.215 TRIAL BY COURT, FINDINGS AND JUDGMENT.** Upon a trial of an issue of fact by the court, its decision shall be given either orally immediately following trial or in writing and filed with the clerk within 60 days after submission of the cause, and shall state separately the facts found and the conclusions of law thereon; and judgment shall be entered accordingly.

Approved April 24, 1963.

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