

CHAPTER 407

AN ACT to repeal 299.24 (2); to renumber 253.142 (1) (c) and 299.24 (3); to renumber and amend 253.142 (2); to amend 19.01 (4) (c), 59.395 (4), 59.42 (3), 59.77 (6) and (7), 62.24 (1) (a) and (b), 69.50, 72.12 (3), 80.20, 251.181 (1) and (3) (b), 253.142 (3), 256.22 (1), 299.205, 299.24 (1) (as amended by supreme court rule) 299.26, 299.28 (2), 299.30 (3), 324.29 (4), 956.03 (1) and 957.054 (1) and (2); to repeal and recreate 299.30 (1); and to create 253.11 (3) and 299.29 of the statutes, relating to certain court procedures.

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

SECTION 1. 19.01 (4) (c) of the statutes is amended to read:

19.01 (4) (c) In the office of the clerk of the circuit court of any county: Of the county judge, of all court commissioners, of all * * * *family court commissioners*, of all justices of the peace, of all *municipal justices of the peace*, and of all other judges or judicial officers elected or appointed in and for such county, or whose jurisdiction is limited thereto;

SECTION 2. 59.395 (4) of the statutes is amended to read:

59.395 (4) Send to the secretary of state on or before June 1 of each year * * * certified * * * *lists* of all justices of the peace and *municipal justices of the peace* who filed their official bonds during the preceding year.

SECTION 3. 59.42 (3) of the statutes is amended to read:

59.42 (3) On a change of venue at commencement in the court to which the action is transferred (no suit tax), \$5; on filing an appeal from an inferior, * * * *county* or justice court, \$5 plus suit tax.

SECTION 4. 59.77 (6) and (7) of the statutes are amended to read:

59.77 (6) Every * * * court commissioner and justice of the peace shall receive from the county treasurer 12 cents per folio for making statements and returns required by sub. (3) * * * and 25 cents for making each certificate required by sub. (4) * * *. All such statements and certificates shall be transmitted to the county clerk by registered mail * * * and for * * * transmitting such statements and certificates such * * * court commissioner or justice of the peace shall receive * * * 12 cents.

(7) JUSTICES AND COMMISSIONERS. The county board at any session thereof, either an adjourned or a special session, may as provided in sub. (4) (b) * * * examine and allow any statement, account or claim of any * * * court commissioner and justice of the peace which is on file with the county clerk before the opening of such session of the county board.

SECTION 5. 62.24 (1) (a) and (b) of the statutes are amended to read:

62.24 (1) (a) The common council of any city may by ordinance provide for the election of a justice of the peace, and in cities of the first class, one or more such justices, to be "municipal justice of the peace" in addition to justices of the peace otherwise provided for by law and such municipal justice of the peace shall be elected at large as provided by the council. He shall qualify pursuant to s. 62.09 (4) and file pursuant to s. 19.01 (4) (c). In any city which has so provided for the election of a municipal

justice of the peace and which on January 1, 1962, has a police justice of the peace presiding, such police justice of the peace shall thereupon become the municipal justice of the peace for such city for the balance of the term to which he was elected or appointed as police justice of the peace.

(b) The council shall fix a salary for such justice which shall be in lieu of fees and costs. Such salary may be increased by such governing body before the start of the second year of service of the term of the justice, but shall not be decreased during the term of the justice. Salaries may be paid annually or in equal instalments as determined by such governing body, but no justice shall be paid a salary for any time during his term during which such justice has not executed * * * his official bond, or official oath as required by s. 60.58, 61.30 or 62.09 (4), and filed pursuant to s. 19.01 (4) (c).

SECTION 6. 69.50 of the statutes is amended to read:

69.50 * * * A court of record of any county in which any marriage is legally filed shall make an order correcting such record on proof being made to the satisfaction of the court that the record is incorrect in any particular. The officer in charge of such records shall file the order or a copy certified by the clerk under the seal of the court, and such record shall have the same effect as the record of marriage duly returned by the proper person.

SECTION 7. 72.12 (3) of the statutes is amended to read:

72.12 (3) The county court of Dane county and the judge thereof shall have jurisdiction to hear and determine all questions relating to the determination and adjustment of inheritance taxes in the estates of nonresident decedents in which a tax appears to be due, and in which it does not otherwise appear necessary for regular administration to be had therein; provided that in all cases in which a nonresident dies possessed of real or tangible personal property located within this state, the county court, and the judge thereof, of the county in which such property is located shall have concurrent jurisdiction with said Dane county court. And in such estates the public administrator may be appointed as special administrator for the purposes of such adjustment. The county treasurer shall retain for the use of the county out of all such taxes paid and accounted for, only one per cent, and the balance, less the statutory expenses of collection and adjustment as fixed by the court, shall be paid into the state treasury; provided, * * * that the minimum fee to which the county shall be entitled shall be \$3 in each case and that in no case shall the maximum fee exceed \$100 * * *.

SECTION 8. 80.20 of the statutes is amended to read:

80.20 Before proceeding to act under said warrant said commissioners shall be duly sworn justly and impartially to discharge their duties as such commissioners; they shall meet at the time and place mentioned in such warrant and proceed to examine such highway; they shall hear the parties interested therein and any proofs offered by them; the entire record of the proceedings before the commissioners inclusive of all appearances, petitions, notices, testimony which may be taken only under oath, exhibits, findings, decisions, and other orders relating thereto, shall be so prepared and certified. The review of such order of determination by the commissioners shall where such record contains a transcript be confined to the basis of such record. Their decision shall be reduced to writing, signed by them, annexed to the warrant, and, together with the same, be filed with the town, city or village clerk, as the case * * * requires, within the time directed in such warrant. Each commissioner shall receive \$5

per day and 5 cents per mile for his actual travel * * *, to be paid by the party appealing; and if the order or determination appealed from * * * is reversed he shall be reimbursed such expenses by the town, city or village, or if it * * * is a town line road the same shall be reimbursed equally by such towns or by the town and city or village. The judge shall cause to be filed with the town clerk all the other papers and proceedings relating to such appeal, duly certified by him. If such highway * * * is on a line between 2 towns or between a town and a city or village they shall make a duplicate of their decision with a copy of the warrant and appeal annexed, which shall be filed with the town clerk of the other town or of the city or village as the case may be.

SECTION 9. 251.181 (1) and (3) (b) of the statutes are amended to read:

251.181 (1) There is created a judicial council of * * * 17 members as follows: A supreme court justice designated by the supreme court; a circuit judge designated by the board of circuit judges; a county judge designated by the board of county judges; a judge designated by the board of criminal court judges; a juvenile court judge designated by the board of juvenile court judges; the chairman of the senate judiciary committee or a member of the committee designated by him; the chairman of the assembly judiciary committee or a member of the committee designated by him; the attorney general or one of his assistants designated by him; the revisor of statutes or an assistant designated by him; the deans of the law schools of the university of Wisconsin and Marquette university or a member of the respective law school faculties to be designated by said deans; the president-elect of the state bar of Wisconsin and 3 additional members thereof selected by the * * * state bar; and 2 citizens at large, appointed by the governor. The last 5 members shall serve 3-year terms * * *. The names of the members shall be certified to the secretary of state by the executive secretary. Members shall hold office until their successors have been selected. The members of the council shall receive no compensation, but shall be reimbursed from the appropriation made by s. 20.490 for expenses necessarily incurred by them in attending meetings of the council outside the county of their residence.

(3) (b) The council may promulgate and modify rules for the conduct of its proceedings in the exercise of its powers. The council may meet at such time and place as it * * * determines but at least once every 3 months. It shall meet upon call of the chairman or a call signed by 5 members of the council. * * * Nine members shall constitute a quorum.

SECTION 10. 253.11 (3) of the statutes is created to read:

253.11 (3) Except for municipal justice court concurrent jurisdiction as to garnishment under s. 62.24, the county court shall have the exclusive jurisdiction of garnishment actions where the amount involved is under \$500.

SECTION 11. 253.142 (1) (c) of the statutes is renumbered 253.142 (2) (b).

SECTION 12. 253.142 (2) of the statutes is renumbered 253.142 (2) (a) and amended to read:

253.142 (2) (a) In probate matters and in civil matters * * * except those tried under small claims procedure and other actions to recover forfeitures, the provisions of ss. 261.08 to 261.11 shall apply, except that upon the disqualification of any county judge the case shall be referred to the clerk * * * or, in probate matters in counties having a population

of 500,000 or more, the register in probate, *who* shall request the chief justice of the supreme court, pursuant to s. 251.182, to designate and assign another judge to attend and hold court in such matter. * * *

SECTION 13. 253.142 (3) of the statutes is amended to read:

253.142 (3) If said matter has been set for hearing the same shall stand continued until the judge so * * * designated to act * * * is ready to take it up for disposition. If the matter has not been set for hearing, the judge * * * *designated* to act shall order a hearing thereon.

SECTION 14. 256.22 (1) of the statutes is amended to read:

256.22 (1) No judge, while holding such office, shall be in any manner engaged or act as attorney or counsel; and no *judge or his clerk or any person employed by him in or about his office*, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any matter or action pending before such *judge or officer*, or which he has reason to believe will be brought before him for decision, or draft or prepare any papers, *including wills*, or other proceedings relating to any such matter or action except when expressly authorized by law; and no court commissioner or other judicial officer shall be allowed to demand or receive any fees or compensation for services as such commissioner or judicial officer, except those expressly authorized by law, upon penalty, for any violation hereof, of removal from office.

SECTION 15. 299.205 of the statutes is amended to read:

299.205 On the return date of the summons or at least 2 weeks prior to the trial date, upon the filing by any party of an affidavit that he has good reason to, and does, believe that he cannot have a fair trial on account of the prejudice of the judge, naming him *and motion thereon*, the judge shall thereupon be disqualified to act in relation to that matter. *The time for filing such affidavit and making such motion may be extended for cause but not more than 10 days.* In a county having more than 3 branches such affidavit may name 2 judges. The case shall then be referred to the clerk who, in * * * *courts containing 3 or more branches*, shall request a judge from another branch of that court to attend and hold court in such matter. In single or 2 branch courts, or * * * *if* no other judge is able to serve, the clerk shall request the chief justice of the supreme court, pursuant to s. 251.182, to designate and assign another judge to attend and hold court in such matter.

SECTION 16. 299.24 (1) (as amended by supreme court rule effective September 1, 1962) of the statutes is amended to read:

299.24 (1) When a judgment or an order is rendered, the judge or clerk shall immediately enter it in the case docket and note the date thereof which shall be the date of entry of judgment or order. The clerk, except in municipal and county forfeiture actions, shall mail a notice of entry of judgment to the parties or their attorneys at their last known address within 3 days of its entry. Any such judgment shall be a docketed judgment for all purposes upon payment of a fee of 50 cents to the clerk. *The clerk shall enter such docketed judgment in an appropriate judgment docket book.*

SECTION 17. 299.24 (2) of the statutes is repealed.

SECTION 18. 299.24 (3) of the statutes is renumbered 299.24 (2).

SECTION 19. 299.26 of the statutes is amended to read:

299.26 On appeal to the circuit court, the appellant shall pay to the clerk of court a suit tax of \$5 as provided in s. 271.21 and a filing fee of * * * \$5 as provided in s. 59.42 * * * (3).

SECTION 20. 299.28 (2) of the statutes is amended to read:

299.28 (2) A motion to set aside a verdict or to open up a judgment and for a new trial founded upon newly discovered evidence may be heard upon affidavits and the proceedings in the action. Such a motion may be made at any time within one year from the verdict or finding. * * * The order granting or denying the motion * * * shall be in writing and shall specify the grounds for granting the new trial, or state the court's reasons for denying it.

SECTION 21. 299.29 of the statutes is created to read:

299.29 DEFAULT JUDGMENTS. (1) MOTION TO REOPEN. There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown. The notice of motion must be made within 20 days after entry of judgment in ordinance violation actions and within 90 days in other actions. In ordinance violation cases default judgments for purposes of this section include pleas of guilty, nolo contendere and forfeitures of deposit.

(2) STIPULATIONS. The court, judge or justice having trial jurisdiction to recover a forfeiture may, with or without notice, for good cause shown by affidavit and upon just terms, within 30 days after such stipulation has been entered into, relieve any person from such stipulation or any order, judgment or conviction entered or made thereon. Where such stipulation was made without appearance in or having been filed in court, the court, judge or justice may order a written complaint to be filed and set the matter for trial. The stipulation or a copy shall, in such cases, be filed with the court, judge or justice and costs and fees shall be taxed as provided by law.

SECTION 22. 299.30 (1) of the statutes is repealed and recreated to read:

299.30 (1) ORDERS. An appeal may be taken to the circuit court from orders denying motions or petitions made under ss. 299.14, 299.28 and 299.29 within 20 days of entry of such order.

SECTION 23. 299.30 (3) of the statutes is amended to read:

299.30 (3) * * * Within 20 days (*10 days in unlawful detainers*) after the date of mailing of notice of entry of judgment, as appears in the case docket, any appeal other than one specified in sub. (2) may be taken to the circuit court by any party to an action or proceeding from any final judgment by filing a notice of appeal signed by appellant or his attorney with the clerk of the court which tried the case under this chapter, and by serving a copy of the notice of appeal on all parties bound by the judgment who appeared in the action or their attorneys. Execution may be stayed under ch. 274, *except that in unlawful detainers, the security provisions of ss. 291.11 and 291.13 shall apply*. Within 40 days after notice of appeal is filed the appellant shall file with the clerk of court either a transcript of the reporter's notes of the trial or an agreed statement on appeal, or a statement that his appeal can be supported by the case file without the transcript. The appellant shall pay the costs of preparing the transcript.

SECTION 24. 324.29 (4) of the statutes is amended to read:

324.29 (4) At the time of * * * *filing the petition for probate or administration of an estate*, an affidavit setting forth the facts showing whether or not any of the parties interested in such matter are actively

engaged in the military service of the United States *shall be filed*. Whenever it * * * *appears* by such affidavit or otherwise that any person in the active military service of the United States is interested in any proceeding under Title XXIX pending in county court and is not represented by an attorney the judge shall appoint an attorney to represent such person and protect his interest and no further proceedings shall be had until such appointment has been made. An attorney appointed by the court to represent any person in the military service in any proceeding in the probate of an estate may be allowed compensation and his necessary expenditures to be fixed by the court, and paid out of the estate.

SECTION 25. 956.03 (1) of the statutes is amended to read:

956.03 (1) If the presiding judge has acted as attorney for a defendant or for the state in the pending action, or if a defendant moves, in the manner provided in civil actions, for a change of venue on account of the prejudice of the judge, another judge shall be called in the manner provided in civil actions to try the action, except that in * * * county courts containing 3 or more branches the case shall be referred to the clerk who shall in accordance with the rules of said court assign the case to another branch of that court for trial or other proceedings. The time of making such motion may be extended for cause but not more than 10 days. In felony cases the motion shall be made within 20 days after his arraignment and before the case is called for trial. In misdemeanor, ordinance and traffic forfeiture cases the time for such motion shall be at arraignment or at the time the defendant demands a jury trial if one is demanded. In either case only one such motion shall be allowed and the affidavit of prejudice in any such misdemeanor or ordinance case shall not name more than one county judge.

SECTION 26. 957.054 (1) and (2) of the statutes are amended to read:

957.054 (1) If a 6-man jury is demanded by the defendant before the trial begins, the judge shall direct the clerk of the * * * court to select by lot from the current jury panel the names of 18 residents of the county qualified to serve as jurors in courts of record, from which lists the defendant and the state may each strike * * * 5 names. If either party neglects to strike out names, the clerk shall strike out names for him. Except in counties having a population of 500,000 or more, no voir dire examination or challenge for cause shall be permitted. The clerk shall issue a venire to the sheriff or constable to summon * * * any 6 persons whose names are not struck out, to appear at the time and place named in the venire.

(2) Jurors may all be residents of a municipality in which the court is held unless the defendant demands a county-wide jury. For this purpose a municipal jury list may be established, known as the "----- (name of municipality) jury list", which shall be constituted as follows: The jury commissioners appointed by the circuit court of the county in which the municipality is located shall, * * * from time to time as required by the county court, provide and furnish a list containing the names of 200 jurors selected by them from citizens residing within the municipality involved. The judge or judges of county court may by court order direct the jury commissioners to furnish a list of less than 200 jurors, but in no event shall such list contain less than 50 names. Except as herein provided, the provisions of s. 255.04, relating to the preparation of jury lists for the circuit court, so far as applicable, shall apply to and govern the preparation of such list, but the slips containing the names of jurors so selected shall be deposited in a box designated the "----- (name of municipality) jury list."

Approved December 4, 1963.