

1977 Senate Bill 72

Date published: May 15, 1978

### CHAPTER 323, Laws of 1977

AN ACT to repeal 753.14 (title), 753.15 to 753.155, 753.17, 754.41 and 757.68 (2) and (3); to renumber 753.14 (1) to (3); to amend 59.07 (90), 59.77 (6), 757.68 (title), (1), and (2) as renumbered, and 967.02 (6); and to create 63.03 (1) (y), 245.16 (5), 247.40, 757.69 to 757.72 and 967.07 of the statutes, relating to the powers and duties of court commissioners and changing certain fees.

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

SECTION 1. 59.07 (90) of the statutes is amended to read:

59.07 (90) MILWAUKEE COUNTY; FEE FOR CERTAIN MARRIAGE CEREMONIES. In counties having a population of 500,000 or more, enact an ordinance imposing a fee not to exceed \$15 to be paid in advance to the county treasurer for each marriage ceremony performed by a judge or a court commissioner specified in s. 245.16 (5) in the courthouse, safety building or children's court center during hours when any office in those public buildings is open for the transaction of business.

SECTION 2. 59.77 (6) of the statutes is amended to read:

59.77 (6) FEES FOR STATEMENTS AND CERTIFICATES. Every court commissioner and municipal justice shall receive from the county treasurer ~~12 cents~~ \$1 per ~~folio~~ page for making statements and returns required by sub. (3) and ~~25 cents~~ \$1 for making each certificate required by sub. (4). All such statements and certificates shall be transmitted to the county clerk by ~~registered~~ certified mail and for transmitting such statements and certificates such court commissioner or municipal justice shall receive ~~12 cents~~ \$1.

SECTION 3. 63.03 (1) (y) of the statutes is created to read:

63.03 (1) (y) Full-time court commissioners under s. 757.68 (1).

SECTION 4. 245.16 (5) of the statutes is created to read:

245.16 (5) Any family court commissioner appointed under s. 247.13 or court commissioner appointed under s. 757.68.

SECTION 5. 247.40 of the statutes is created to read:

**247.40 Contempt proceedings.** All contempt orders in which confinement is imposed shall be issued by a judge.

SECTION 6. 753.14 (title) of the statutes, as affected by chapter 187, laws of 1977, is repealed.

SECTION 7. 753.14 (1) to (3) of the statutes, as affected by chapter 187, laws of 1977, are renumbered 757.68 (2) to (4), and 757.68 (2), as renumbered, is amended to read:

757.68 (2) (title) PART-TIME COURT COMMISSIONERS. In each county the circuit and county judges shall appoint such number of part-time court commissioners as the proper transaction of business requires subject to the following exception: in counties having a population of 200,000 or more each judge may appoint not more than 2 such commissioners and in counties having a population of less than 200,000 each judge shall, as nearly as possible, appoint an equal number of commissioners within the county. In all counties the appointments shall be subject to the approval of a majority of the circuit judges of the county and a majority of the county judges of the county. Appointments shall be in writing and shall be filed in the office of the clerk of the circuit court. All court commissioners appointed after ~~May 1, 1953~~ the effective date of this act (1977), other than official court reporters ~~or persons who have served as official court reporters in any court of record in this state for a period of not less than 5 years acting under s. 757.71 (2) (b) performing duties or exercising powers specified for court reporters,~~ shall be attorneys licensed to practice in this state ~~except in counties where a sufficient number of such licensed attorneys are not available.~~ Each ~~The appointing~~ judge shall have power at will and without cause to remove any court commissioner appointed by the judge or the judge's predecessor in office. ~~The Unless he or she is so removed, the~~ term of each court commissioner, ~~unless removed by the judge,~~ shall continue until the expiration of the term of the ~~appointing~~ judge ~~who appointed him or her~~ and until the successor of the commissioner is appointed and qualified. ~~Each commissioner before entering upon the duties of office shall take and subscribe the constitutional oath of office and file the same duly certified, together with his or her appointment, in the office of the clerk of the circuit court of the county for which he or she is appointed. Each court commissioner shall take and file the official oath in the office of clerk of the circuit court of the county for which appointed before performing any duty of the office.~~

SECTION 8. 753.15 to 753.155 of the statutes, as affected by chapter 187, laws of 1977, are repealed.

SECTION 9. 753.17 of the statutes, as affected by chapter 187, laws of 1977, is repealed.

SECTION 10. 754.41 of the statutes, as affected by chapter 187, laws of 1977, is repealed.

SECTION 11. 757.68 (title) and (1) of the statutes, as affected by chapter 187, laws of 1977, is amended to read:

**757.68 (title) Court commissioners in populous counties.** (1) (title) APPOINTMENT IN POPULOUS COUNTIES. In counties having a population of ~~500,000~~ 100,000 or more, there is ~~may be~~ created in the classified service the office of judicial full-time court commissioner. The county board shall establish the number of positions and set the salary for the office. Any person qualified and acting as a judicial court commissioner on the effective date of this act (1977) shall be deemed a full-time court commissioner and shall continue in the classified county civil service but any new appointee shall be in the unclassified (exempt) civil service. The chairperson of the county board of judges chief judge shall be the appointing power and supervising authority and shall assign and supervise the work of the commissioners who shall be members of the bar ~~residing in the county may terminate the employment of any such commissioner if cause is proven. Such full-time court commissioners shall be attorneys licensed to practice in this state.~~ Each ~~judicial~~ court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.

SECTION 12. 757.68 (2) and (3) of the statutes, as affected by chapter 187, laws of 1977, are repealed.

SECTION 13. 757.69 to 757.72 of the statutes are created to read:

**757.69 Powers and duties of court commissioners.** (1) On authority delegated by a judge, which may be by a standard order, and with the approval of the chief judge, and subject to any rules duly adopted by the county board of judges in counties having a population of 100,000 or more, a court commissioner appointed under s. 757.68 may:

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

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

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

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

(e) Conduct noncontested probate proceedings.

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

(g) When assigned to juvenile court a court commissioner may, under ch. 48, issue summonses and warrants, order the release or detention of children apprehended, conduct detention and shelter care hearings, conduct preliminary appearances and enter into consent decrees. Waiver hearings under s. 48.18 and dispositional hearings under ss. 48.33 to 48.35 shall be conducted by a juvenile court judge. When acting in an official capacity and assigned to the juvenile court center, a court commissioner shall sit at the juvenile court center or such other facility designated by the chairperson of the county board of judges. Any decision by the commissioner shall be reviewed by the judge of the branch of juvenile court to whom the case has been assigned upon motion of any party. Any determination, order or ruling by the commissioner may be certified to the branch of juvenile court to whom such case has been assigned upon a motion of any party for a hearing de novo.

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

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

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

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

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

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

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

- (a) Officiate at a marriage ceremony.
  - (b) Issue subpoenas and attachments or other process to compel the attendance of witnesses, administer oaths and affidavits, take depositions and testimony when authorized by law or rule or order, and certify and report the depositions and testimony.
  - (c) Issue the following writs returnable before a judge at a time set by the judge or the judge's clerk: habeas corpus; certiorari; ne exeat and alternative writs of mandamus.
  - (d) Supervise accountings subsequent to a forced tax sale of land.
  - (e) Issue subpoenas returnable before a judge on behalf of the Wisconsin department of justice for antitrust violations under s. 133.06 (1) or bingo control act violations under s. 163.71 (1).
  - (f) Investigate and dispose of unclaimed property under ss. 171.04 to 171.06.
  - (g) Conduct a paternity proceeding according to the procedures set out in ch. 52 whenever a court commissioner is specifically authorized to do so.
  - (h) Conduct supplementary hearings on the present financial status of a debtor.
  - (i) Take and certify acknowledgments.
- (4) In addition to the duties expressly set forth in sub. (3) (a) to (c), a court commissioner may perform other ministerial duties as required by a court.
- (5) A court commissioner may transfer to a court any matter in which it appears that justice would be better served by such a transfer.
- (6) Every judge of a court of record has the powers and duties of a court commissioner.
- (7) A court commissioner shall refer to a court of record for appropriate action every alleged showing of contempt in the carrying out of the lawful decisions of the commissioner.

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

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

**757.71 Court commissioners; fees.** (1) Any public employe retirement system to which the state or any political subdivision of the state has contributed on behalf of a person for service as a court commissioner shall temporarily suspend any annuity payments being made to the person during the time the person is serving as a court commissioner, and any annuity payments which are affected by this subsection shall be permanently forfeited without any right to payment at a later date. Annuity payments which have been temporarily suspended under this subsection shall be reinstated after a person ceases to serve as a court commissioner. The homerule provisions for the retirement system created by chapter 201, laws of 1937, as established by chapter 405, laws of 1965, do not apply to this subsection.

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

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

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

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

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

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

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

(2) The county board in counties having a population of 500,000 or more and the judge having probate jurisdiction in counties having a population of at least 100,000 but not more than 500,000 may assign to the probate court commissioners any matters under s. 754.10, and the probate court commissioners may determine such matters and may sign any order or certificate required in such determination.

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

(4) The county board in counties having a population of 500,000 or more and the judge having probate jurisdiction in counties having a population of at least 100,000 but not more than 500,000 shall be the appointing and supervising authority and may terminate the employment of any probate court commissioner so appointed if cause is proven. Such probate court commissioners shall be attorneys licensed to practice in this state.

(5) The register in probate of a county shall have the duties and powers of a probate court commissioner and shall act in such capacity when designated to do so by either judge in counties having a population of 500,000 or more or by the judge having probate jurisdiction in counties having a population of at least 100,000 but not more than 500,000.

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

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

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

SECTION 14. 967.02 (6) of the statutes is amended to read:

967.02 (6) "Judge" means judge of a court of record. ~~For the purposes of issuing summonses, arrest warrants or search warrants, conducting initial appearances of persons arrested and setting bail, "judge" also includes a court commissioner.~~

SECTION 15. 967.07 of the statutes is created to read:

**967.07 Court commissioners.** A court commissioner may exercise powers or perform duties specified for a judge if such action is permitted under s. 757.69.

SECTION 16. **Cross reference changes.** In the sections of the statutes listed in Column A, the cross references shown in Column B are changed to the cross references shown in Column C:

	<b>A</b>	<b>B</b>	<b>C</b>
	<b>Statute Sections</b>	<b>Old Cross References</b>	<b>New Cross References</b>
	133.06 (3)	753.17	757.71 (2)
	163.71 (1) (c)	753.17	757.71 (2)
	247.13 (1)	753.14	757.68
	753.16	753.15	757.69
	753.175	753.17	757.71 (2)
	807.09 (1)	753.14	757.68
	887.26 (7)	753.17	757.71 (2)

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