

CHAPTER 307.

COSTS AND FEES.

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307.01 Fees of justices. Justices are entitled to the following fees and may tax the same as costs in all actions when applicable.

- Acknowledgment of deed and certifying for each grantor, 25 cents.
- Adjournment, 25 cents.
- Appeal, approving undertaking, making return, including travel, \$1.50.
- Bond taken and approved, 25 cents.
- Certificate of conviction, 50 cents.
- Commitment to jail, 50 cents.
- Copy of proceedings or any paper, 10 cents per folio.
- Deposition, taking, 12 cents per folio.
- Discharging prisoner on motion, 12 cents.
- Docketing, 50 cents.
- Drawing affidavit in attachment, replevin or garnishee, 50 cents.
- Drawing paper for which no other allowance is made, 12 cents per folio.
- Entering action without process, 12 cents.
- Entering action to process, 12 cents.
- Entering verdict, 50 cents.
- Execution, 25 cents.
- Filing paper, 5 cents.
- Judgment, entering, 50 cents.
- Judgment, entering satisfaction, 12 cents.
- Marrying and making return, \$1.50 and such other sum as may be donated.
- Notice to take depositions, 25 cents.
- Oath to witness, administering, 6 cents.
- Oaths, all other, administering, certifying, 12 cents.
- Opening judgment for rehearing, 25 cents.
- Order to bring up prisoner, 25 cents.
- Order to discharge prisoner from jail, 25 cents.
- Recognizance of bail, taking, 50 cents.
- Returning papers after preliminary examination, \$1.50.
- Security taken and approved, 25 cents.
- Subpoena, 50 cents.
- Summons, 50 cents.
- Taking deposition, examination, testimony or for any writing done in an action, 12 cents per folio whether transcribed by the justice at request of party or done by some other person.
- Taxing costs, 25 cents.
- Transcript of judgment, 25 cents.
- Travel in going and returning to perform any service when not otherwise provided for and such travel is necessary, 5 cents per mile. No compensation is allowed for travel to file certificate of conviction, but such certificate may be mailed to the clerk of the circuit court and the registry fee and postage shall be recoverable.
- Undertaking taken and approved, 25 cents.
- Unlawful detainer, inquisition, \$1.00.
- Venire for jury, 50 cents.
- Warrant, 50 cents.

Writ not herein enumerated, 25 cents. [*R. S. 1849 c. 131 s. 15; R. S. 1858 c. 133 s. 29; 1871 c. 84 s. 1; 1875 c. 125 s. 1; 1878 c. 263; R. S. 1878 s. 3774; 1880 c. 174; Ann. Stats. 1889 s. 3774; Stats. 1898 s. 3774; 1905 c. 114 s. 1; Supl. 1906 s. 3774; Stats. 1925 s. 307.01; 1929 c. 202; 1933 c. 460 s. 1; 1935 c. 326; 1945 c. 441*]

Comment of Advisory Committee, 1945: R. S. 1878, section 2533 provided that a justice of peace attend at the drawing of jurors. See also Wis. Stats. 1911. Section 2533 was repealed by ch. 441, Laws 1913. Now there is no statute which says justice shall aid clerk of court. The fee for depositions, etc., is made 12 cents per folio, however transcribed, instead of 12 cents if done by the justice and 5 cents if done by someone else. The fee for travel is made 5 cents, going and coming, the same as jurors' travel, instead of "traveling to perform any service" etc., "going, per mile, ten cents." (Bill 193-S)

Note: The proper county is liable to justices for fees incident to the administration of the criminal laws of the state, but not for fees in actions for the violation of village ordinances, though such actions are brought in the name of the state. For the latter the proper village is liable. *Chafin v. Waukesha County*, 62 W 463, 22 NW 732. See notes to 59.77, 1930 Annotations.

County judge in Chippewa county may retain fees allowed justice of peace under this section, obtained in justice court branch of his court. 22 Atty. Gen. 693.

307.02 Costs, prevailing party to recover. The justice shall also tax the following as costs in favor of the party recovering judgment:

(1) Witness fees for travel and attendance, not exceeding \$15, unless the justice, by an order entered in his docket, directs that a larger sum (not exceeding \$25) be taxed, in which case he shall state in his order the reasons for making it, and fees of jurors at the rate of \$2 per day and 5 cents for each mile necessarily traveled to attend the trial, both coming and going, for each juror in attendance, less the amount advanced by the opposite party when the jury was demanded by him. Jurors' fees, when collected, shall be paid by the justice to the jurors.

(2) Fees for serving subpoenas and travel in serving them. But no witness fees or fees for serving subpoenas shall be taxed for travel or attendance on the return day except in actions where either party is entitled to proceed to trial on such day, unless an adjournment is had for cause or the trial is had on the return day.

(3) All other lawful fees and charges of any officer for services rendered in the action pursuant to law.

(4) An attorney's fee as follows, except when the amount thereof is otherwise specially provided for: On a judgment for \$50 or less, 10 per cent of the judgment; on a judgment over \$50 and less than \$100, \$5; on a judgment for \$100 or over, \$10. In an action of replevin the value of the property recovered shall govern the attorney's fee. When judgment is for the defendant the amount claimed in the complaint shall govern the attorney's fee. No attorney's fee shall be taxed in behalf of a party unless he appeared by attorney. But no attorney's fee shall be taxed for the plaintiff unless the defendant put in an answer or demurrer.

(5) In actions for work and labor an attorney's fee of not less than \$5 nor more than \$20, in the discretion of the justice, when the plaintiff appears by an attorney, whether or not the defendant appeared. [*R. S. 1849 c. 88 s. 69; R. S. 1849 c. 131 s. 16, 25, 28; 1851 c. 258 s. 1; R. S. 1858 c. 120 s. 68; R. S. 1858 c. 133 s. 21, 30, 33; 1865 c. 188 s. 1; 1870 c. 30 s. 2; 1871 c. 142 s. 2; 1872 c. 99; 1873 c. 182; 1876 c. 96; 1877 c. 225 s. 1; R. S. 1878 s. 3775; 1891 c. 106; Stats. 1898 s. 3775; 1907 c. 312, 337; Stats. 1925 s. 307.02; 1929 c. 14; 1931 c. 262 s. 1; 1933 c. 460 s. 1; 1945 c. 441*]

Comment of Advisory Committee, 1945: (5) because the fee is discretionary and because the last sentence of (4) is amended for cause no fee is now prescribed if the recovery is \$100 or over. The \$100 limit is struck from (Bill 193-S)

307.025 Costs in trespass by hunting or fishing. Taxable costs in an action for trespass by hunting or fishing on wild and uninclosed lands shall not exceed the damages awarded for the actual injury caused by the trespass. [*1911 c. 293; Stats. 1911 s. 3575m; Stats. 1925 s. 300.09; 1945 c. 441*]

Comment of Advisory Committee, 1945: Old 300.09 is out of place. * * * It should be in Ch. 307, Costs and Fees, and is renumbered 307.025. As amended, the action is not confined to the "owner." The occupant of the land may be entitled to bring the action. It is thought that the purpose of the section is not to say who shall bring it, but to limit the costs. (Bill 193-S)

Note: "Wild" land under this section is land in a state of nature, uninhabited, un-

occupied, uncultivated and not in use by the owner, his agent or lessee, for any artificial purpose. But marsh, however extensive, leased and used as a feeding and breeding place for wild fowl, and for hunting and fishing, and which, though uninclosed is surrounded by cultivated farms, is not wild land. For a trespass upon such lands the costs should not be limited by this section. *Diana S. Club v. Kohl*, 156 W 257, 145 NW 815.

307.03 Taxation of costs. At the time of entering judgment the justice may without notice tax the costs. [*R. S. 1849 c. 131 s. 17; R. S. 1858 c. 133 s. 22; R. S. 1878 s. 3776; Stats. 1898 s. 3776; Stats. 1925 s. 307.03; 1945 c. 441*]

307.04 Fees, to be proved; none for serving process, when. No fees for travel of a witness or interpreter shall be allowed unless proved by the oath of some person having knowledge of the fact, nor for travel in serving a subpoena unless charged by an officer or proved by the oath of the person who served it; and no fees shall be allowed to a party for serving or travel in serving a subpoena in his own action. [*R. S. 1849 c. 131 s. 18, 19; R. S. 1858 c. 133 s. 23, 24; R. S. 1878 s. 3777; Stats. 1898 s. 3777; Stats. 1925 s. 307.04; 1945 c. 441*]

Revisers' Note, 1878: "Sections 23 and 24, chapter 133, R. S. 1858, combined, writing in place of the words 'some person qualified to testify in the cause,' the words 'some person having knowledge of the facts,' and adding a clause prohibiting the allowance of fees to a party for serving subpoenas in his own case."

307.05 Fees for witnesses, copies, etc. The attendance of not more than 5 witnesses to each particular fact shall be taxed; and if any witness attends upon 2 or more actions in the same day before the same justice his fees shall be equally apportioned among the parties who summoned him. No fees for copies of documents or papers or for depositions shall be allowed unless such copies or depositions were used upon the trial. [*R. S. 1849 c. 131 s. 20-22; R. S. 1858 c. 133 s. 25, 26; R. S. 1878 s. 3778; Stats. 1898 s. 3778; Stats. 1925 s. 307.05; 1945 c. 441*]

Revisers' Note, 1878: "Sections 25 and 26, chapter 133, R. S. 1858, the limit on number of witnesses is extended as being too low, and because the gross sum taxable is limited."

Note: But one attendance fee and one traveling fee are to be paid to a person to require him to appear and answer as a garnishee in several actions brought by the same plaintiff, returnable at the same time and place before the same justice. *Walsh v. Timlin, 98 W 333, 73 NW 1003.*

307.06 Disbursements to be proved. No disbursements shall be allowed unless the items are specified and proved to the justice and were in his opinion necessary and reasonable; and the justice may hear evidence offered to prove or disprove any charge. [*R. S. 1849 c. 131 s. 23; R. S. 1858 c. 133 s. 27, 28; R. S. 1878 s. 3779; Stats. 1898 s. 3779; Stats. 1925 s. 307.06; 1945 c. 441*]

Note: A constable is entitled to the same charge for disbursements in executing a writ of restitution as a sheriff is entitled to charge under 59.28 (24) and (25), there being no provision for such a charge in the schedule of constable's fees. *American W. Co. v. McManus, 174 W 300, 181 NW 235, 183 NW 250.*

307.07 Costs in garnishment. A garnishee is entitled to the same fees for travel and attendance as a witness, and he is not bound to appear or answer unless his fees for travel and one day's attendance are first paid; and such fees shall be taxed as costs in the action as witness fees are taxed. When a corporation is garnished the fee for the attendance of some officer to answer shall be paid to the person upon whom the garnishee summons is served. [*1876 c. 361 s. 1; R. S. 1878 s. 3781; Stats. 1898 s. 3781; Stats. 1925 s. 307.07; 1945 c. 441*]

307.08 Security for costs. Except as otherwise provided the justice shall require the plaintiff, if a nonresident of the county, to give security for costs in an amount up to \$100 and may require like security of all other plaintiffs. Unless security for costs is asked for or ordered on or before the return day, the right to security is waived. If the plaintiff refuses or neglects to give security, when required, the action shall be dismissed except if the plaintiff files an affidavit that he has a valid claim against the defendant for work or labor and is unable to give security for costs, then it need not be given. [*R. S. 1858 c. 120 s. 12; R. S. 1878 s. 3782; 1883 c. 223; Ann. Stats. 1889 s. 3782, 3783a; Stats. 1898 s. 3782; 1919 c. 210; Stats. 1925 s. 307.08; 1945 c. 441*]

Comment of Advisory Committee, 1945: The \$100 limit is from 307.10. (Bill 193-S)

Note: Order requiring plaintiff to give security for costs is appealable, and upon appeal the circuit court may require such security. *Redlin v. Wagner, 160 W 447, 152 NW 160.*

In the exercise of a sound discretion a justice may dismiss an action if the plaintiff unreasonably refuses or neglects to comply with an order requiring him to give security for costs. But such refusal does not deprive the justice of jurisdiction, nor does his order and judgment dismissing the action prevent an appeal therefrom. *Steinam v. Schulte, 83 W 567, 53 NW 844.*

Security may be required under this section notwithstanding, upon an application of plaintiff for an adjournment in a replevin case, he is required to give security for costs and for any damages the defendant may recover. *Stark v. Small, 72 W 215, 39 NW 359.*

The failure of a nonresident plaintiff to give security for costs is a mere error and not jurisdictional. *Salter v. Hilgen, 40 W 363.*

Order requiring resident plaintiff to give security will not be reversed unless there has been an abuse of discretion. *Campbell v. Chicago & N. W. R. Co., 23 W 490.*

Though an order requiring a resident plaintiff to give security for costs is not complied with and the case proceeds without it, the jurisdiction is not affected. *Taylor v. Wilkinson, 22 W 40.*

307.09 Surety to sign memorandum; execution thereon. The person becoming security shall sign the following memorandum on the docket: I, A. B., agree to become security for the costs in this action in a sum not to exceed \$100 If judgment is rendered against the plaintiff, execution for costs may issue against the plaintiff and the surety; or the defendant may maintain an action upon the memorandum against the surety for the recovery of the costs. [*R. S. 1858 c. 120 s. 13; R. S. 1878 s. 3783; Stats. 1898 s. 3783; 1913 c. 141; Stats. 1925 s. 307.09; 1945 c. 441*]

Revisers' Note, 1878: "Section 13, chapter 120, R. S. 1858, amended to enable an action to be maintained on the security, to meet the interpretation put on the section in *Smith v. Lockwood, 34 W 72.*"

307.10 Surety company bond authorized. Any bond, undertaking or recognizance permitted or required by law or by order of the justice may be executed by any surety company authorized to do business in this state, using the usual forms for that purpose; and when security is required to be entered in the docket as provided by section 305.11 or

307.09, the company may furnish such security by filing an undertaking in substantially the following form:

Whereas an action has been commenced (or is about to be commenced) in justice court in the county of by, plaintiff against, defendant; therefore, the company, a surety company duly authorized to do business in Wisconsin, undertakes to become surety for costs in such action (or, agrees to pay all costs and damages which shall be adjudged against in the action, as the case may require).

Dated, 19.., Company By

The undertaking shall be accompanied with the certificate of the commissioner of insurance, mentioned in sections 204.02 to 204.04. The cost of the undertaking, not to exceed \$5, is a taxable disbursement in the action. [1903 c. 106; Supl. 1906 s. 3783a; 1913 c. 141, 691; Stats. 1925 s. 307.10; 1945 c. 441]

Comment of Advisory Committee, 1945: taking is successful. The \$100 limit is moved to 307.08. (Bill 193-S)
The bond premium "shall be taxed" only when the party who furnished the under-