

CHAPTER 253.

COUNTY COURTS.

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253.01 County court established; where held. There is established in each county a county court which shall be held by the county judge at the county seat of such county and at such other places as the county judge shall order.

Cross Reference: For provision for keeping office and holding special terms in certain counties, other than at county seat, see 253.26.

253.02 County judges; election; term. A county judge shall be elected in each county on the first Tuesday in April, 1913, and every sixth year thereafter. The term of office of county judge shall be 6 years, commencing on the first Monday in January after election. No person shall be eligible to the office of county judge who is not, at the time of his election or appointment, an attorney of a court of record.

History: 1951 c. 290.

Comment of Advisory Committee, 1951: The probate jurisdiction of all county courts is identical. All county judges are lawyers except one. All county judges should be lawyers. The population of a county does not determine the size of estates or the difficulty of the questions of law presented. If a new county is created, provisions for election of the county judge can be included in the enabling act. (Bill 194-S)

253.03 Jurisdiction. (1) The jurisdiction of the county court shall extend to the probate of wills and granting letters testamentary and of administration on the estates of all persons deceased who were at the time of their decease inhabitants of or residents in the same county and of all who shall die without the state having any estate within such county to be administered, and to any other cases authorized by law; to the appointment of guardians to minors and others in the cases prescribed by law; to all matters relating to the settlement of the estates of such deceased persons and of such minors and others under guardianship; to all cases of constructions of wills admitted to probate in such court; and to all cases of trusts and trust powers created by will admitted to probate in such court; and to hearing objections to the granting of licenses to marry, to ordering the refusal of such licenses, and to the granting of stays upon the issuance thereof, and such court shall have and exercise such other jurisdiction and powers as are or may be conferred by law.

(2) The county court shall have concurrent jurisdiction to hear, try and determine all matters and controversies which may arise between any personal representative, guardian or trustee appointed by such court and any other person relating to title to or interest in real and personal property so far as such matter or controversy is incidental to and necessary for the complete administration of the estate, guardianship or trust, and regardless of who has possession of the property or in whose name it may be, to the same extent and with like effect as such matters and controversies may be heard, tried and determined in courts of general jurisdiction.

(3) Subsection (2) shall not affect the provisions of chapters 313 and 319 relating to debts of or claims against decedents or persons under guardianship.

It is common practice for county courts in Wisconsin to assign the remaining personal estate of a testator in trust where a life estate is created by the will, as an order-ly and efficient means of carrying out the terms of the will, even though a trust is not provided for therein by express words, and the county courts have jurisdiction so to do

and their acts in so doing are not coram non iudice. Estate of Lenahan, 258 W 404, 46 NW (2d) 352.

See note to 310.11, citing Estate of Austin, 258 W 578, 46 NW (2d) 861.

The county court in probate had no jurisdiction of the subject matter of a petition of a hospital, which had furnished room and board to a decedent and was a judgment creditor of his estate, praying that a son of the decedent, who had filed no claim against the estate, be required to account to the es-

tate for the reasonable cost of care which the son had allegedly failed to furnish to the decedent under a bond of support; or of a petition that such son of the decedent be required to account to the estate for the sum of \$7,000 by reason of an attempted election by a guardian, appointed shortly before the death of the decedent, to declare such sum due under the bond of support because of an alleged disagreement between the decedent and the son. Will of Reinke, 259 W 398, 48 NW (2d) 613.

253.035 Jurisdiction of estates of deceased foreign persons. (1) The jurisdiction of the county court shall also extend to a determination of the heirs and next of kin of nonresident foreign deceased persons who at the time of their death had an interest in real or personal property within such county and the state.

(2) The jurisdiction of the county court shall also extend to the administration of estates of nonresident foreign deceased persons who at the time of their death had an interest in real or personal property within such county and the state. A claim against the state school fund under section 318.03 (4) shall be deemed an interest in real or personal property.

(3) For the purposes of this section the situs of intangible personal property found in this state belonging to nonresident foreign deceased persons shall be deemed to be within the state.

(4) All matters arising in this section shall be administered in accordance with the statutes, rules and procedure of the county court applicable to the statutes of deceased residents of the state.

(5) All such nonresident foreign persons who have not been heard from for 10 years shall be presumed to be dead.

History: 1951 c. 699.

253.04 Two counties; jurisdiction retained. If a case be originally within the jurisdiction of the county courts of two or more counties the court which shall first take cognizance thereof by the commencement of proceedings shall retain the same throughout.

253.05 Jurisdiction; residence collateral attack. The jurisdiction assumed by any county court in any case, so far as it depends on the place of residence of any person or the location of his estate, shall not be contested in any action or proceeding whatever except on an appeal from the county court in the original case or when the want of jurisdiction appears on the same record.

253.06 May issue process. The several county courts shall have power to issue all summonses, citations, subpoenas, executions, warrants and processes authorized by law which may be necessary to carry into effect any order, judgment or decree thereof, to compel the attendance of witnesses or to carry into execution the powers with which they are vested.

253.07 Disqualification of judge by relationship or interest; by affidavit; another judge called; procedure; pay and expenses. (1) (a) When the county judge or his wife, child, parent, brother or sister is interested, or when the judge is the executor, administrator or guardian in any matter to be decided by the court, he shall be disqualified to act in relation to that matter.

(b) When any person, or the attorney for any person, interested in a matter in the county court, either at the time of filing any petition or any objection, notice of contest or other paper raising an issue, or at any other time up to and including the day set for hearing such matter, files an affidavit stating that he has good reason to believe and verily believes that from prejudice or other cause the judge of the county court, naming him, will not decide impartially, the judge shall thereupon be disqualified to act in relation to that matter. No person shall be allowed to file an affidavit against more than one judge in any matter.

(c) The disqualified judge shall thereupon request another judge to hold court for the purpose of settling or deciding such matter.

(d) The person who files such an affidavit of prejudice may be ordered by the court to immediately pay to the adverse party the fees of his witnesses in attendance on the hearing date and an attorney's fee of \$10, unless the adverse party was notified in writing at least 5 days prior to the hearing that such an affidavit had been or would be filed. Failure to make payment as ordered shall nullify the effect of the affidavit of prejudice. This paragraph does not apply in case an outside judge is presiding at the hearing of such matter unless the affiant has had 8 days' written notice that he was to preside.

(2) The request to another judge to hold court shall be filed in the court forthwith by the judge thereof and a copy mailed to the judge requested to act, and if said matter has been set for hearing the same shall stand continued until the judge so requested to act

shall be ready to take it up for disposition. If the matter has not been set for hearing, the judge requested to act shall order a hearing thereon.

(3) The judge requested to act shall attend and act in such matter, so far as in his judgment the proper discharge of his other duties will permit. Ex parte orders, letters, bonds, petitions and affidavits may be presented to such acting judge, by mail or in person, for signing or approving, wherever he may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the county judge of the county where the records and files of the matter are kept.

(4) Whenever any county judge is required to hold court in any county other than that for which he was elected he shall receive \$25 per day and his actual expenses, to be audited and paid by the county board of the county in which he so holds court.

History: 1951 c. 580.

253.08 Courts of record; seals. Every county court is a court of record and shall have a seal, and may direct and from time to time alter the inscriptions and devices thereon, and the respective county boards shall furnish such seals as shall be ordered; and when any such court shall be unprovided with a seal the judge thereof may authorize the use of any temporary seal or any device by way of seal until a seal shall be so provided. The seals now in use by said courts shall continue to be the seals thereof until others shall be provided according to law.

253.09 Filing signature and seal. Every county judge now serving in the state of Wisconsin, and every county judge hereafter elected to that office upon entering upon the duties of his office, shall file with the secretary of state his official signature, together with a certified impression of the seal of his court.

253.10 County court terms; adjournments; court always open. (1) A regular term of the county court shall be held on the first Tuesday of each month, except July and August, and shall continue to the commencement of the next regular term; and in case any matter shall not be heard at the term appointed therefor it shall stand continued until the next regular term unless the court shall otherwise order; but every county court shall be open at all times for the transaction of business.

(2) Special terms may be appointed by a general or special order entered in the minutes of the court; and when any order shall be made and notice given for the hearing of any matter at a term, such order shall be a sufficient appointment of a special term.

(3) In case any matter appointed to be heard at a special term is not heard at the appointed term, it stands continued to the current regular term and may be heard at any time, unless the court orders otherwise.

253.11 Judge may hold court in other counties. Any county judge may act as county judge of any county upon the request of the county judge thereof, and while so acting he shall have the same powers as if elected for the county in which he is acting. In case the office of county judge is vacant or the county judge is totally incapacitated, such request may be made by the circuit judge for the county where the vacancy or disability exists.

253.12 Orders to be made in open court. Every order and judgment in probate proceedings which affects the rights of any person shall be made in open court; except that a judge who holds court in a county other than his own may file findings of fact, order or judgment with the same effect as if done in open court.

253.13 Judges, partners, clerk, not to be counsel. No judge of the county court, his law partner, clerk or any person employed in or about his office shall be retained or employed as solicitor, attorney or counsel in any action or matter which may depend on or in any way relate to any judgment or decree made or passed by him; nor shall he or any such person be solicitor, attorney or counsel for or against any executor, administrator, trustee or guardian appointed within his jurisdiction in any action brought by or against the executor, administrator, trustee or guardian as such, nor in any action relating to the official conduct or duty of such party.

253.14 Clerks, etc., not to be appraisers, etc. No clerk or other person employed in the office of any county judge shall be commissioner, appraiser or divider of any estate in any case that is within the jurisdiction of such county judge or of the county court.

253.15 Salary, judges not to take fees when. (1) The annual salary of the county judge shall be payable out of the county treasury and shall be fixed by the county board at the annual meeting preceding the ensuing year in which he is to be elected. The salary so fixed shall not be increased or diminished during the term of the county judge.

(2) Every county judge is prohibited from taking or receiving, either directly or indirectly, any fees whatever for his official services in the administration of the estates of deceased persons, including proceedings to determine the descent of lands, and for cer-

tificates of title by descent, or termination of life estates, or of joint tenancy in lands or real estate mortgages, or certifying copies of any proceedings had before the court, or in the appointment of guardians, or in the administration of the estates of wards, except in the counties in which it is otherwise expressly provided by law.

(3) The judge of any county court where no other provision is made by law shall be entitled to receive five dollars per day, to be paid from the county treasury, for each day he shall be actually engaged in the examination of any person upon a criminal charge, or engaged upon any other matter, not appertaining to probate business, compensation for which is not otherwise provided.

(4) The county board may by resolution provide that the salary fixed shall be in lieu of all fees, per diem or other compensation out of the county treasury for the performance of any official duty imposed upon the county judge by law by virtue of his office which are authorized under the provision of subsection (3) of this section or of any other statute.

Opinion in 24 Atty. Gen. 631 to effect that Laws 1921, is not modified by amendment to provision relating to salary of county judge 253.15, made by ch. 468, Laws 1935, re- of Marquette county as contained in ch. 450, affirmed. 39 Atty. Gen. 144.

253.16 County judge not to draft papers for actions; penalty. No county judge or his clerk or any person employed by him in or about his office shall be allowed to draft or prepare any paper or give advice pertaining to the drafting or preparation of papers or as to who shall prepare them, relating to any matter, proceeding or action pending in or which there is good reason to believe will be brought or instituted in the county court over which such judge presides, except such as are expressly given by law. The prohibitions of this section shall apply to the drawing of wills. Any county judge who shall violate any of the provisions of this section shall be fined not less than fifty dollars nor more than five hundred dollars and be subject to impeachment.

[253.17 Stats. 1945 repealed by 1947 c. 110]

253.18 What books to be kept. There shall be kept in every county court the following books:

(1) A court record in which the judge shall cause every matter or proceeding had in said court to be entered under a proper title, with a brief statement of the nature thereof, and of all papers filed, which in anywise relate to the same, with the date of filing and a reference to the page and volume of the minute book where any minute record shall have been made in any such matter or proceeding, so that such record shall be a complete index or brief history of the matter or proceeding from the beginning to the final disposition thereof.

(2) A minute book in which shall be entered a brief statement of all the proceedings of the court during its sessions, and show all motions made and by whom, and all orders granted in open court or otherwise and the names of all witnesses sworn or examined in any matter or proceeding in such court.

(3) A record book in which all wills admitted to probate with the probate thereof, all orders, judgments or decrees made in any matter or proceeding, all letters testamentary, or administration or guardianship shall be recorded in full.

(4) An alphabetical index to each of such books.

253.19 Testimony to be written. When any witness is sworn and examined in any contested matter or proceeding in any county court and an appeal is taken, the judge thereof shall cause the testimony to be reduced to writing, and the stenographic reporter of such court shall receive the fees provided by law for transcripts of testimony in circuit court; provided, that nothing herein shall prohibit the judge in his discretion from causing the testimony to be so reduced to writing even in the absence of an appeal.

253.20 Penalty for noncompliance. Every county judge who shall neglect or refuse to comply with the provisions of sections 253.18 and 253.19 shall forfeit for each such neglect or refusal not less than twenty-five nor more than two hundred dollars.

253.21 Presumption in favor of orders. When the validity of any order or judgment of a county court shall be drawn in question in any other action or proceeding everything necessary to have been done or proved to render the order or judgment valid, and which might have been proved by parol at the time of making the order or judgment and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved unless the contrary appears on the same record.

253.22 Orders, etc., how enforced. If any person shall refuse or neglect to perform any order, judgment or decree of a county court such court may issue a warrant, directed to any sheriff, constable or other proper officer in this state, requiring him to apprehend and imprison such person in the common jail of the county until he shall perform such order, judgment or decree, or be delivered by due course of law.

253.23 Revocation of warrants, etc. Any warrant or commission for the appraisal of any estates, for examining claims against estates for partition of real estate or for the assignment of dower may be revoked by the judge of the county court for sufficient cause; and the judge may thereupon issue a new commission or proceed otherwise therein as the circumstances of the case shall require.

253.24 Judge to give notice of escheats. Whenever any county judge shall have knowledge or information that any real estate in his county has escheated to the state or that the state is entitled to receive any personal property belonging to the state of any deceased person for want of heirs or next of kin he shall forthwith notify the attorney-general of such fact.

253.25 Office and records to be kept at county seat. Every county judge in this state shall keep his office and the books, papers and records of the office of county judge at the county seat of the county in which he holds his office, which office and the books, papers and records thereof shall at all reasonable times be open to access and inspection by any person having any business therewith.

253.26 Except in certain counties. (1) The county judges of the counties of Chippewa, Columbia, Dodge, Fond du Lac, Grant, Green Lake, Jefferson, Monroe, Pepin, Pierce, Shawano, Trempealeau, Walworth, Washington and Waukesha may keep their offices and hold special terms of the county court at any time between the times of holding the regular terms and transact any business which might be done at, or which may be continued from, any regular term to such special term at the following places, in their respective counties:

In the county of Chippewa, at the cities of Chippewa Falls and Stanley;

In the county of Columbia, at the city of Columbus;

In the county of Dodge, at the cities of Beaver Dam, Fox Lake, Horicon, Mayville, Watertown and Waupun;

In the county of Fond du Lac, at the cities of Ripon and Waupun;

In the county of Grant, at the city of Platteville;

In the county of Green Lake, at the village of Princeton, the city of Berlin and village of Markesan;

In the county of Jefferson, at the city of Watertown;

In the county of Monroe, at the cities of Sparta and Tomah;

In the county of Pepin, at the village of Pepin;

In the county of Pierce, at the city of River Falls;

In the county of Shawano, at the village of Wittenberg;

In the county of Trempealeau, at the villages of Galesville and Osseo;

In the county of Walworth, at the city of Whitewater;

In the county of Washington, at the city of Hartford;

In the county of Waukesha, at the city of Oconomowoc.

(2) All orders, judgments, and business which shall be made and done at such special terms and places, or as shall have heretofore been so made or done, are declared valid.

(3) Any such county judge so authorized to keep his office and hold special terms of such county court and transact business at any such city as above provided may, when such city is located partly in the county for which such judge was elected, and partly in an adjoining county in this state, keep his office and hold such terms of court and transact any business which might be done at any regular term, within that part of such city in the county adjoining such county for which such judge was so elected, and may compel the attendance of witnesses and issue subpoenas and citations ordering and compelling the attendance of parties and witnesses at such office or place of holding such special term within such adjoining county, and may there transact any and all business which might be done at, or which may be continued from any regular term to such special term so held by order of such county judge within such adjoining county.

253.27 Register in probate. Any county judge may appoint, from time to time, by an instrument in writing filed with the county clerk, a competent person to act as clerk of the county court, who shall be officially designated as register in probate for the county in which such court is held. Such register shall, before entering upon his duties, take and subscribe the constitutional oath of office and file the same in the office of the clerk of the circuit court for such county. He shall perform such duties as the judge may direct, and whenever such judge shall be absent from the county seat or unable to discharge his duties and any application shall be made to such court which requires notice of hearing to be given such register may cause such notice to be given and make an order directing that it be given. Such order and notice when signed "by the court,, register in probate," shall have the same effect as if signed by the county judge. If the board of any county in which such register may be appointed and in which his salary is not fixed by law

shall not fix a salary for him the judge shall compensate such register for his services. The foregoing shall not apply to any county in which a register in probate is provided for by any other statute; but any register may administer any oath required in proceedings in such court and certify to copies of records and files therein.

253.28—Certified copies. Registers in probate shall have the same powers as clerks of courts, to certify to copies of papers, records and judicial proceedings. And copies so certified to by such registers in probate shall be receivable in evidence with like effect as if certified to by clerks of courts.

253.29 Register in probate; clerks; oaths; certified copies. (1) The registers in probate and clerks of the county courts, and duly authorized deputy clerks, shall have the power to administer oaths, and certify to copies of any judgment, order, report or other paper or record of the county courts, and, in counties of a population of less than five hundred thousand, shall collect therefor the same fees as is provided by law for clerks of the circuit courts for like services, such fees to be disposed of according to law.

(2) The fees enumerated in this subsection, in counties of a population of five hundred thousand or more, shall be charged and collected by the registers in probate, and clerks of the county court, in full for all services rendered in the respective proceedings. The term "register of probate" appearing in any special act means the same as the term "register in probate".

(a) For filing a petition whereby any proceeding in estates of deceased persons is commenced, where the gross estate or value of the property is ten thousand dollars or less, a fee of three dollars; where the gross estate is more than ten thousand dollars and under twenty-five thousand dollars, a fee of six dollars; where the gross estate is twenty-five thousand dollars or more, a fee of twenty-five dollars. Such fees shall be paid at the time of the filing of the inventory, or other documents, setting forth the value of the estate in such proceedings. The fees fixed in this subsection shall also be paid in survivorship proceedings and in such survivorship proceedings the value shall be based on the value of the property passing to the survivor or survivors.

(b) For a certificate terminating a life estate, one dollar.

(c) For a certificate or judgment of descent of lands the same fees shall be charged and collected as are charged in estate proceedings in paragraph (a) of this subsection based upon the valuation of the property passing by said certificate or judgment of descent.

(d) For filing objections to the probate of a will, ten dollars, except that this fee may be waived by the court when objection is made by a guardian ad litem, and further except that the court shall have discretion to order a refund of said fee to the objector from the assets of the estate.

(e) For receiving a will for safekeeping, one dollar.

(f) For filing claims against estates, twenty-five cents, except that the state or the political subdivisions thereof and bureaus and boards of the state and its political subdivisions shall be exempt from the payment of this fee.

(g) For each certificate issued by the registers in probate or county judges, fifty cents.

(h) For copies of records or other papers in the custody and charge of registers in probate at the rate of fifty cents a page; and for the comparison and attestation of such copies as are not provided by the registers, twenty-five cents for each page, but the minimum charge in each of the above mentioned instances shall be one dollar.

(3) The register in probate and the clerk of the county court shall, on the first Monday of each month, pay into the office of the county treasurer, for the use of the county, all fees collected by him and in his hands and still unclaimed as of said day.

(4) Nothing herein contained shall be construed as depriving the county judge or any official of the county court of any compensation by way of fees, to which he may be entitled prior to the passage of this section; and the county treasurer shall reimburse such county judge or official on account of all such fees which shall hereafter be paid into the county treasury.

(5) Any provision of any section or part of any section of the statutes in conflict with the provisions of this section shall be construed to be controlled by the provisions of this section.

253.295 Borrowing court files regulated. The registers in probate and clerks of the county courts shall not permit any papers filed in their offices to be taken therefrom except upon the same terms and conditions specified in section 269.60.

253.30 Board of county judges. The several county judges of the state shall constitute a board to be known as the "Board of County Judges." They shall hold a meeting each year, at such time and place as they may determine. They shall make such rules and regulations in accordance with law, and not inconsistent with the rules of practice adopted by the supreme court, as they shall deem advisable to promote the administration of the

judicial business of the county courts of the state, and transact such other business as may properly come before them. Said board shall elect such officers as they may deem advisable for the proper conduct of their business, and such officers shall be elected for such terms as the board of county judges may determine. Such board may prescribe rules or by-laws for the conduct of their business. Each county judge attending the meeting or meetings of the board shall on presenting his certificate of attendance to the county treasurer of his county be reimbursed for his travel and hotel bills out of the general fund in the county treasury.

253.31 Uniform forms for county courts. (1) The board of county judges or its duly authorized committee shall from time to time adopt such uniform forms for use in the administration of the judicial business of the county courts as they deem necessary.

(2) Duly authenticated copies of all legal forms so adopted shall be furnished the office of secretary of state and there be kept on file and copies thereof shall, by the secretary of state, be transmitted to all of the county courts of Wisconsin.

(3) Only such applications and other process when properly presented to the county court on such uniform forms shall in the discretion of the court be received and accepted by every such court on and after January 1, 1931.

253.32 Public administrator; appointment; qualifications, oath, bond, term. The county court shall appoint a public administrator who shall, before entering upon his duties, take the official oath and give bond, with sufficient sureties, to the judge of said court, in a sum not less than one thousand dollars, with conditions substantially like the conditions of administrators' bonds, and that he will faithfully perform his duties; which bond shall be approved by the county court and with the oath filed and recorded therein. Additional bonds may be required by the court. The expense of surety upon such bonds shall be paid by the county treasurer out of inheritance tax funds belonging to the state, on the order of the county judge. The person appointed shall be an attorney if one is available and his term shall terminate upon the appointment of his successor. This section does not apply to Milwaukee county.

253.33 County court reporter. (1) **APPOINTMENT, OATH, DUTIES.** The judge of the county court may appoint, and remove at pleasure, a reporter to take the testimony in contested matters and may require him to file a transcript of such testimony. Every person so appointed is an officer of the court, and shall discharge such duties as the court or judge thereof shall require, and before entering upon his duties shall file his official oath in such court.

(2) **COMPENSATION.** Such reporter shall be paid by the county for his services such sum as the county board shall allow.

Note: (2) is printed as renumbered and amendment (ch. 56, Laws 1951) is not shown amended by ch. 386, Laws 1951. An earlier here.

(3) **TRANSCRIPT OF TESTIMONY.** Such reporter shall furnish to any party a transcript of the testimony taken by him in any matter or proceeding mentioned in this section upon being paid therefor the fees provided by law for transcripts of testimony in circuit court.

History: 1951 c. 56, 386.