

CHAPTER 271.

COSTS AND FEES IN COURTS OF RECORD.

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271.01 Costs allowed to plaintiff. (1) Except as otherwise provided in this chapter, costs shall be allowed of course to the plaintiff upon a recovery.

(2) In an action which the complaint shows is within justice court jurisdiction, when the recovery is less than \$100, the plaintiff shall recover only such costs as the court allows.

(3) In an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than \$50 damages he shall recover no more costs than damages.

271.02 Costs limited, discretionary. (1) When several actions are brought against parties who might have been joined as defendants and the actions are consolidated under section 269.05 no costs, other than disbursements, shall be allowed to the plaintiff in excess of what he would be entitled to had he brought but one action.

(2) In equitable actions and special proceedings costs may be allowed or not to any party, in whole or in part, in the discretion of the court, and in any such case the court may award to the successful party such costs (exclusive of disbursements) not exceeding \$100, as the court deems reasonable and just, in view of the nature of the case and the work involved. This subsection refers only to such costs and fees as may be taxed by the authority of the statutes, independent of any contract of the parties upon the subject, which contract shall apply unless the court finds that the provisions thereof are inequitable or unjust.

See note to 271.10, citing *Janesville v. Chicago & N. W. R. Co.* 258 W 547, 46 NW (2d) 847.

271.03 Costs to defendant. (1) If the plaintiff is not entitled to costs under 271.01 (1) or (3) or is denied costs under 271.01 (2), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint.

(2) Where there are several defendants who are not united in interest and who make separate defenses by separate answers, if the plaintiff recovers against some but not all of such defendants, the court may award costs to any defendant who has judgment in his favor.

Five plaintiffs united in a single complaint to recover on notes; their causes of action were identical except as to amount, every issue that affected any of them affected each, one firm of attorneys represented them all, but each plaintiff could have begun its own separate action on its own note with separate right of recovery, and if successful could have taxed costs. Each plaintiff when unsuccessful was liable for costs to the defendant. (*Gospodar v. Milwaukee Automobile Ins. Co.* 249 W 332, applied.) *B. F. Goodrich Co. v. Wisconsin Auto Sales, Inc.* 256 W 11, 39 NW (2d) 678.

Where the 3 defendants in an action by one plaintiff for injuries sustained by him in an automobile collision filed no separate answers, the refusal of the trial court to grant costs to a defendant as to whom the action was dismissed was not error but was within the discretion of the court. *Derenne v. Vlies*, 258 W 424, 46 NW (2d) 226.

Where a judgment dismissing the complaint was granted on the defendants' motion for summary judgment, judgment costs, not mere motion costs, should have been allowed to the defendants. *Christie v. Lueth*, 265 W 326, 61 NW (2d) 338.

271.035 Costs upon counterclaims and cross complaints. (1) Except as otherwise provided in this section, costs shall be allowed on counterclaims and cross complaints as if separate actions had been brought thereon.

(2) When the causes of action stated in the complaint and counterclaim and cross complaint arose out of the same transaction or occurrence, costs in favor of the successful party upon the complaint and counterclaim and cross complaint so arising shall be in the discretion of the court.

(3) Costs recovered by opposing parties shall be offset.

271.036 Omnibus costs provision. If a situation arises in which the allowance of costs is not covered by sections 271.01 to 271.035, the allowance shall be in the discretion of the court.

An ordinary order sustaining a demurrer would not carry costs with it except as a condition of pleading over, but an order which properly denies to the plaintiff the opportunity to plead over, and dismisses the action, carries costs with it, in the discretion of the trial court. *Pedrick v. First Nat. Bank of Ripon*, 267 W 436, 68 NW (2d) 154.

271.04 Items of costs. When allowed costs shall be as follows: (1) FEES. (a) When the amount recovered or the value of the property involved is one thousand dollars or over, the costs (exclusive of disbursements) shall be one hundred dollars; when it is less than one thousand dollars and is five hundred dollars or over, fifty dollars; when it is less than five hundred dollars and is two hundred dollars or over, twenty-five dollars; and when it is less than two hundred dollars, fifteen dollars.

(b) When no money judgment is demanded and no specific property is involved, or where it is not practical to ascertain the money value of the rights involved, the costs under paragraph (a) shall be fixed by the court, but shall not be less than fifteen dollars nor more than one hundred dollars.

(2) DISBURSEMENTS. All the necessary disbursements and fees of officers allowed by law, the suit tax, the compensation of referees, guardian ad litem fees, a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but in no event shall such item exceed the authorized sheriff's fee for the same service, amounts actually paid out for certified copies of papers and records in any public office, postage, telegraphing, telephoning, express or for plats and photographs, not exceeding \$15 for the last 2 items, and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to such lands.

(3) JUDGMENT ON CONFESSION. When a judgment for damages is entered upon confession or upon a note or bond and warrant of attorney five dollars shall be recovered for costs exclusive of disbursements.

(4) INTEREST ON VERDICT. When the judgment is for the recovery of money, interest at the legal rate from the time of verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs.

(5) DISBURSEMENTS IN TIMBER TRESPASS. In actions founded upon the unlawful cutting of timber, or such cutting and its conversion, or such cutting and its unlawful detention, when the value of such timber or the damages recovered exceeds fifty dollars, full costs shall be recovered by the plaintiff, and there shall be included therein the actual reasonable expense of one survey and ascertainment of the quantity of timber cut, made after the commencement of the action, by one surveyor and one assistant, if proved as a necessary disbursement. And the defendant shall recover like costs in the same manner in case the plaintiff is not entitled to costs.

(6) If the judgment is by default or upon voluntary dismissal by the adverse party the costs taxed under subsection (1) shall be one-half what they would have been had the matter been contested.

(7) If the offer of judgment pursuant to section 269.02 is not accepted and the plaintiff fails to recover a more favorable judgment he shall not recover costs but the defendant shall have full costs to be computed on the demand of the complaint.

(8) In all actions brought for the benefit of any county, town, village, city or other municipal corporation of this state by a citizen taxpayer, the plaintiff shall be entitled to recover for his own use, in case he shall prevail, the taxable costs of such action and such part of the recovery as the court shall deem reasonable, as attorney's fees, not to exceed 20 per cent of such recovery, and not to exceed \$500.

History: 1955 c. 159, 188.

Cross Reference: See 204.11 as to recovery of premium on suretyship obligation given by a fiduciary.

Under 204.11, the successful plaintiff in an action for an injunction was entitled to include as costs the premium paid on a surety bond filed by it in connection with the issuance of a temporary restraining order. *Skelly Oil Co. v. Peterson*, 257 W 300, 43 NW (2d) 449.

Under 204.11, the plaintiff, prevailing in a replevin action, was entitled to tax as a part of his disbursements the premium paid by him on a surety bond which he was obliged to furnish in such action. *Confidential Loan & Mortgage Co. v. Hardgrove*, 259 W 346, 48 NW (2d) 466.

Where the amount of damages assessed in a verdict is reduced, the plaintiff is entitled to interest, from the time of verdict until judgment is entered, on that part of the verdict for which judgment is entered, unless the order granting the option to take the reduced amount clearly excludes the right to interest. *Rasmussen v. Milwaukee E. R. & T. Co.* 261 W 579, 53 NW (2d) 442.

Where the defendant, in an action for personal injuries in which separate causes of action in favor of 2 plaintiffs were alleged, prevailed on a motion for summary judgment dismissing the complaint, the defendant was entitled to tax costs against each of the plaintiffs. *Baldwin v. St. Peter's Congregation*, 264 W 626, 60 NW (2d) 349.

Where insured brought 2 actions against its insurer to determine liability under the policy to 2 injured persons, and the liability claimed in each action exceeded \$1,000, the insurer is entitled to \$100 costs in each action under (1) when its motion for summary judgment is granted. *Al Shallock, Inc. v. Zurich General Acc. & L. Ins. Co.* 266 W 265, 63 NW (2d) 89.

271.07 Costs on motion. Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding ten dollars, and may be absolute or directed to abide the event of the action.

271.08 Costs on appeal from justice court; certiorari. (1) In actions appealed from justices' court, where there is no new trial, if the judgment be affirmed or the appeal dismissed the respondent shall have costs; if reversed, the appellant; if affirmed in part and reversed in part, the court may award the costs or such part thereof as shall seem just to either party. Where there is a new trial costs shall be awarded to the successful party; but if the appeal be from a judgment in favor of the appellant he shall have costs only when he shall obtain a more favorable judgment, and otherwise the respondent shall have costs. In all such cases full costs shall be ten dollars fees and all disbursements made for state tax, return of the justice, and officers' and witnesses' fees, together with all costs taxable in the justice's court in such action.

(2) Upon certiorari to justice court the same costs shall be awarded to the successful party as provided by subsection (1), where there is no new trial.

271.10 Taxation of costs. (1) **CLERK'S DUTY, NOTICE, REVIEW.** The clerk shall tax and insert in the judgment and in the docket thereof, if the same shall have been docketed, on the application of the prevailing party, upon three days' notice to the other, the sum of the costs and disbursements as above provided, verified by affidavit.

(2) **COST BILL, SERVICE.** All bills of costs shall be itemized and served with the notice of taxation.

(3) **OBJECTIONS, PROOFS, ADJOURNMENT.** The party opposing such taxation, or the taxation of any particular item shall file with the clerk a particular statement of his objections, and he may produce proof in support thereof and the clerk may adjourn such taxation, upon cause shown, a reasonable time to enable either party to produce such proof.

(4) **COURT REVIEW.** The clerk shall note on the bill all items disallowed, and all items allowed, which have been objected to; and his action may be reviewed by the court on motion of the party aggrieved made and served within ten days after taxation, which review shall be founded on the bill of costs and the objections and proof on file in respect thereto. No objection shall be entertained on such review which was not made before the clerk, except to prevent great hardship or manifest injustice.

In an equitable action, the taxation of \$100 as costs was permissible under 271.02 (2), but an order of the trial court fixing the costs at an additional sum of \$10 was unauthorized and erroneous in relation to the additional sum, in the absence of service of the notice required by 271.10 (1). *Janesville v. Chicago & N. W. R. Co.* 258 W 547, 46 NW (2d) 847.

271.11 Disbursements, how proved. Charges in a bill of costs for witness fees, or copies of documents or other disbursements, except to officers for services shall not be taxed without an affidavit stating the distance the witnesses respectively traveled and the days they actually attended, and an affidavit that such copies were necessarily obtained for use; nor shall such other disbursements be allowed without an affidavit specifying the items thereof, nor unless they appear to have been necessary and reasonable in amount.

271.12 Costs may be set off. If, in any action, a recovery be had by one party and costs be awarded to the other the court may set off one against the other and render judgment for the balance.

271.13 Referee; court to fix and allow fees. After the trial of any issue by a referee pursuant to a compulsory reference for that purpose his fees and expenses shall be fixed by the court in which his report has been filed and paid by the county as other circuit court expenses are paid. In all other cases the compensation of referees shall be three dollars for each day necessarily occupied with the business of the reference; but the parties may agree in writing upon any other rate of compensation.

271.131 Taxing costs on compulsory references. In all cases of compulsory reference wherein the fees claimed by the referee shall exceed fifty dollars, such fees shall not be allowed until a hearing is had thereon, upon ten days' notice to the district attorney of the county, accompanied by a copy of the bill.

271.14 Fiduciary; liability for costs limited; bond premium. In any action or proceeding prosecuted or defended in any court in Wisconsin by an executor, administrator, guardian ad litem, trustee of an express trust, general guardian or a person expressly authorized by statute, unless otherwise specially provided, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected of the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action, proceeding or defense. In all actions or proceedings in which any receiver, assignee, guardian, guardian ad litem, executor, administrator, or other fiduciary may be entitled to recover costs he may recover in addition to other costs, such sum paid a company authorized by the laws of this state, so to do for becoming his surety upon any bond or other obligation given by him in his representative capacity, in such action or proceeding, pursuant to law or the order of any court or judge, as may be allowed by the court or judge, in which or before whom he accounts, not exceeding two per centum per annum on the amount secured by such obligation, or any less amount which he may have paid any such company for such purpose.

271.15 Assignee's liability for costs. In actions in which the cause of action shall, by assignment, after the commencement of the action or in any other manner become the property of a person not a party to the action such person shall be liable for the costs in the same manner as if he were a party; and payment thereof may be enforced by attachment.

271.16 Settlement, costs on. Upon settlement of an action no greater sum shall be demanded for costs than at the rate prescribed in this chapter.

271.19 Records copied not to be taxed for. No record, writ, return, pleading, instrument or other writing copied into any proceeding, entry, process or suggestion shall be computed as any part of the draft of such proceeding, entry, process or suggestion.

271.21 Suit tax on actions. In each action, special proceeding and cognovit judgment in a court of record having civil jurisdiction there shall be levied a tax of \$5 which shall be paid to the clerk at the time of the commencement thereof, which tax on such matters in the circuit court shall be paid into the state treasury and form a separate fund to be applied to the payment of the salaries of the circuit judges; and which tax in other courts of record the salaries of the judges of which are wholly paid by the counties or by any county and city jointly shall be paid to the county treasurer to create a fund to be applied to the payment of the salaries of such judges.

History: 1953 c. 327.

Cross References: Suit tax is required by sec. 18, art. VII, Const. 128.21 (1) provides that no suit tax is to be collected on amortization of debt proceedings by wage earners. See 59.42 (2) as to payment of suit tax by counties, municipalities and school districts. 52.01 (8) provides that counties are not to pay the suit tax on actions under 52.01.

271.22 What county to pay costs when venue changed, taxation, certification. (1) In all proceedings, including criminal actions, where a change of venue is had (except in cases where such change is made because the action was not brought in the proper county), or when an action, occupying a day or more, is tried outside the county wherein pending, the county in which such action was commenced shall pay to the county in which the same shall be tried the following expenses arising out of such change of venue:

(a) The per diem fees of the clerk or his deputies, all the taxable costs, disbursements and fees of such clerk on any proceeding or action.

(b) The per diem fees of the petit jurors actually in attendance upon said court.

(c) The per diem fees of the sheriff, undersheriff and deputies in attendance upon said court.

(d) All lawful charges for boarding the jury.

(e) The legal fees of all witnesses in any criminal case or proceedings which are a charge against the county.

(f) The fees or compensation of the reporter in attendance upon said court, and such other fees allowed to such reporter in criminal proceedings which are chargeable to the county.

(g) Such other lawful costs, charges, fees, and disbursements which are chargeable to the county, and all lawful costs, disbursements and charges which any such county may be subjected to or may incur in any such action or proceedings.

(h) All charges for subpoenaing witnesses in any criminal case or proceedings and which are a proper charge against the county. The fees of such officers, jurors and reporter to be estimated for each day and part of a day, not less than half a day, occupied in disposing of any such action.

(2) The clerk shall make out a correct bill of all the expenses which shall accrue under this section and have the same taxed and allowed by the presiding judge of such court; and when so taxed shall transmit the same to the county clerk of the county in which said action was commenced. A county order therefor shall issue in favor of the county, in which any such action or proceedings were had, or tried.

(3) Wherever costs are to be taxed against a county, pursuant to the provisions of this section, the district attorney of the county where the action or proceeding was tried shall serve upon the district attorney of the county sought to be charged with such expense a copy of such bill of expenses, together with eight days' notice of the time and place the same will be taxed before the presiding judge of such court. No such bill of expense shall be allowed unless such notice is given or is waived in writing.

271.23 Actions by or against county. In all actions by or against a county, and in actions or proceedings by or against county officers in their name of office, costs shall be awarded to the prevailing party as in actions between individuals.

271.24 Action against city official, cost. Costs, if any, in an action against a city officer in his official capacity, except the action directly involve the title to his office, shall not be awarded against such officer, but may be awarded against the city.

271.25 Court costs, repaid counties. In any civil action or proceeding tried in a circuit court of this state, either by or against the state or any of the state officers in their official capacity, or any of the state commissions, under the provisions of the statutes, there shall be repaid out of the state treasury to said county upon the certificate of the presiding judge and the clerk of said court and the approval of the attorney general and the audit of the director of budget and accounts:

(1) The per diem of the clerk of court.

(2) The per diem and mileage allowed by law to the petit jurors actually in attendance upon said court during the trial of any such action or proceeding.

(3) In case a referee shall be appointed in any such action or proceeding, the fees of the referee and the necessary expenses of such reference.

(4) The fees of the reporter of the court for transcribing the testimony taken in any action against the public service commission in which these statutes require the court to transmit such testimony to such commission. Expenses under this section shall be charged to the legal expense appropriation provided in s. 20.180 (2), except where elsewhere specifically charged to some other appropriation.

271.27 Security for costs. In all cases where it shall appear reasonable and proper the court may require the plaintiff to give sufficient security for such costs as may be awarded against him.

Where it was established that the plaintiff corporation had sold its assets, that the proceeds of the sale had been distributed to its shareholders, that the plaintiff maintained no business office in Wisconsin, that the addresses stated in the records of the register of deeds, in the telephone directory, and in the complaint itself were not addresses where the plaintiff or its agents occupied space, and that its officers and directors resided outside of Wisconsin, it was an abuse of discretion to deny the defendant's motion for security for costs. *Midwest Broadcasting Co. v. Dolero Hotel Co.* 273 W 508, 78 NW (2d) 898.

271.28 Security for costs. (1) DEFENDANT MAY REQUIRE. Except as otherwise provided by section 271.29, the defendant may require the plaintiffs to file security for costs if the plaintiffs are all nonresidents; or are foreign corporations, nonresident executors, administrators, guardians, trustees or receivers; or are trustees or assignees of any debtor; or are imprisoned for crime for terms less than life; or shall take issue upon the answer of the garnishee.

(2) **ORDER FOR SECURITY.** Upon proof by affidavit entitling the defendant thereto the court or judge shall order the plaintiffs to file security for costs in a sum therein mentioned, not less than two hundred and fifty dollars, within twenty days after the service upon them of a copy of such order, and that all proceedings on the part of such plaintiffs be stayed until security is filed.

(3) **SECURITY, HOW GIVEN.** Within the time required the plaintiffs shall file with the clerk of the court, and give the defendant notice thereof, an undertaking with sureties, each of whom shall justify, by affidavit, in the sum stated in the undertaking, above liabilities and exemptions, in property in this state, conditioned to pay on demand all costs that may be awarded to the defendant in such action in any court, not exceeding the sum mentioned in such order. Upon failure to file such undertaking the court may, upon motion of the defendant, dismiss the action.

(4) **DEPOSIT IN LIEU OF UNDERTAKING.** The plaintiffs in lieu of such undertaking may deposit with the clerk of the court (who shall give a receipt therefor) money equal to the amount specified in the order for security, and give notice of such deposit.

271.29 Security for costs by poor persons. (1) Any person may commence, prosecute or defend any action or proceeding in any court, or any writ of error or appeal therein, without being required to give security for cost, upon filing in said court his affidavit that because of his poverty he is unable to pay the costs of said action or proceeding, or any writ of error or appeal therein, or to give security for the same, and that he believes that he is entitled to the redress that he seeks in such action or proceeding, or writ of error or appeal, and setting forth briefly the nature of his cause or appeal, or defense.

(2) The court may dismiss any action or proceeding brought under this section if it be made to appear that the allegation of poverty is untrue; or may require security as in other cases.

271.33 Additional security for costs. If any surety on any undertaking given under section 271.28 shall remove from the state or be deemed at any time insufficient the court or presiding judge may require the plaintiff to give a new undertaking, and every person becoming surety thereon shall be liable for all costs, from the commencement of the action, in like manner as if he had been the original surety.

271.34 Attorney for plaintiff liable for costs. In any case in which the defendant, at the time of the commencement of the action, may require security for costs the attorney for the plaintiff shall be liable for such costs not exceeding \$100, until security therefor is filed, whether such security shall have been required by the defendant or not; but such attorney may relieve himself from such liability by filing an undertaking as prescribed by section 271.28, and giving notice thereof.

271.40 Table of official fees. Every officer whose fees are fixed and limited by law shall publish in some conspicuous place in his office a fair table of such fees. For each day he shall neglect to so publish the same he shall forfeit two dollars.

271.41 Official fees. (1) **ONLY LEGAL FEES TAKEN.** No judge, justice, sheriff or other officer or person to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service than is allowed by statute.

(2) **NO SERVICE, NO FEES.** No fee or compensation shall be demanded or received by any officer or person for any such service unless such service was actually rendered, except when he is allowed by law to require prepayment and except in case of prospective costs allowed by law.

(3) **PENALTY.** Every officer or person violating this section shall be liable to the party aggrieved in the sum of twenty-five dollars damages and also for the actual damages sustained.

271.44 Receipts for fees. Every officer upon receiving fees for any official duty or service shall, if required by the person paying the same, deliver to him a particular receipted account of such fees, specifying for what they respectively accrued; and if he fails to do so he shall be liable to the party paying the same for three times the amount paid.

271.45 Fees for same service allowed to all. When a fee is allowed to one officer the same fee shall be allowed to other officers for the performance of the same services, when such officers are by law authorized to perform such services.

271.46 Taxation after settlement. Upon the settlement of an execution by a defendant or upon settling any action or demand the sheriff or attorney claiming any fees which shall not have been taxed shall, upon being required by the defendant and on his paying the expenses thereof, have his fees taxed by some proper officer authorized to tax costs in the court in which the action may be pending or from which the execution shall have been issued.

271.47 Fees not collectible till taxed. No sheriff, attorney or other person shall collect any fees, after having been required as aforesaid to have the same taxed, without such taxation having been made.

271.48 Duty of officers taxing costs. Every officer authorized to tax costs in any court for services in any proceeding shall examine the bills presented for taxation, whether such taxation be opposed or not, and must be satisfied that the items charged are correct and legal, and shall strike out all charges for services which, in his judgment, were not necessary.