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**251.01 Terms of justices.** The term of office of each of the elected justices of the supreme court shall commence on the first Monday of January next succeeding their election.

**251.02 Clerk of supreme court.** The said justices shall appoint a clerk of the supreme court who shall hold his office at their pleasure. Such clerk, before entering upon the discharge of his duties, shall take and subscribe the constitutional oath of office, and file the same, duly certified, in the office of the secretary of state.

**251.03 Deputy clerk.** The clerk of the supreme court may appoint a deputy clerk to aid him in the performance of his duties, who shall perform the duties of said clerk in case of his absence or inability to act.

**251.035 Supreme court reporter, assistant, and additional help.** (1) **APPOINTMENT.** The supreme court shall, from time to time, appoint, subject to removal, a supreme court reporter; and with the approval of said court the reporter may, from time to time, appoint, subject to removal, an assistant. Every

such appointment of an assistant shall be in writing, shall specify the salary of the appointee, and, after approval as aforesaid, shall be filed with the clerk of the court. Said court may also authorize and direct the reporter to employ such additional help as may be necessary to secure the prompt publication of its decisions. A certified copy of every order appointing a reporter, of every appointment of an assistant and the order approving the same, and of every order authorizing the employment of additional help, shall be filed in the office of the department of administration. All persons appointed or employed under this section shall be deemed assistants and employees of the supreme court.

**(2) REPORTER'S BOND.** Said reporter shall, before he enters upon the duties of his office, execute to the state a bond in the sum of \$2,000, with 2 sufficient sureties to be approved by the secretary of state, conditioned for the faithful performance of his duties as such reporter.

**(3) REPORTER'S DUTIES.** The supreme court reporter is charged with the duty of reporting and procuring the printing and binding, with all convenient speed of all decisions of the supreme court which the court designates for publication, together with suitable notes, abstracts, tables, citations, indexes and other matter, subject to the supervision of the court and pursuant to contract for the publication of volumes known as "Wisconsin Reports" entered into by the department of administration as provided in ch. 35. Said reporter shall have no pecuniary interest in said reports, but shall procure in the name of and for the state a copyright upon each volume.

**251.04 Employes.** (1) Each justice of the supreme court may appoint a secretary to render such assistance in the performance of his duty as may be required, and may remove the person so appointed at pleasure and appoint another in the place of the one so removed.

**(2)** Each justice shall certify such appointment to the department of administration, with the date of the commencement of such service, and shall also notify it of the termination of the service.

**(3)** Such justices may appoint a messenger for said court.

**(4)** The chief justice or one of said justices shall certify the appointment of such messenger to the department of administration, with the date of the commencement of such service, and shall also notify it of the termination of such service.

**(5)** The compensation of such secretaries and messengers shall be paid on warrants drawn by the department of administration. The trustees of the state library may appoint one or more janitors for service in and about the library and

rooms of the justices of the supreme court. Such appointments and the compensation fixed shall be certified to the department of administration by the chief justice and paid as aforesaid.

**(6)** Each justice may employ one attorney at law to assist him as law examiner and to perform such other duties as he requires. Each such attorney shall be admitted to practice as an attorney in all courts of this state. The salary range for each such attorney shall be established as an amount equal to range 12 of salary schedule 1 in the state classification and compensation plan for positions in the classified service. Pay adjustments based on merit for each such attorney may be granted annually by the appointing justice, and they shall be in an amount equal to the salary step for said range 12.

History: 1971 c 125.

**251.05 Crier; marshal.** Such justices may also appoint a crier for said court, who shall attend the terms thereof and perform all the duties required of him by law or by said court, or by the justices thereof. The compensation of the crier shall be audited upon the written allowance of the chief justice or, in case of his absence or sickness, of one of the justices, and paid out of the state treasury. And such justices may further appoint a marshal and assign to him such duties in and about the judicial rooms as they may see fit, including the duties of crier when there is no person holding such position who is competent to act.

**251.055 Pay of employes.** Compensation paid to employes and assistants of the court shall be consistent with that paid to state employes in the competitive division of the classified service for services involving similar work and responsibility where comparisons are possible.

**251.06 Terms of court.** There shall be held in the supreme court room at Madison one session of the supreme court in each year, to be called the August term, which shall commence on the second Tuesday in August.

**251.07 Adjournments; no quorum.** The justice or justices present, less than a quorum, in the absence of the other justices, may adjourn the court to a day in the same term; and in the absence of all the justices such adjournment may be made to a day appointed in an order signed by three or more of the justices and filed with the clerk; and in case of the absence of all the justices and their failure to make such an order the clerk may adjourn the court from day to day for six days; and if the court shall not be opened for six days all matters pending therein shall stand

continued until the next term and no action or matter shall abate or be discontinued.

**251.08 Appellate jurisdiction.** The supreme court shall have and exercise an appellate jurisdiction only, except when otherwise specially provided by law or the constitution, which shall extend to all matters of appeal, error or complaint from the decisions or judgments of any of the circuit or county courts and shall extend to all questions of law which may arise in said courts upon a motion for a new trial, in arrest of judgment, or in cases reserved by said courts.

**251.09 Discretionary reversal.** In any action or proceeding brought to the supreme court by appeal or writ of error, if it shall appear to that court from the record, that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the supreme court may in its discretion reverse the judgment or order appealed from, regardless of the question whether proper motions, objections, or exceptions appear in the record or not, and may also, in case of reversal, direct the entry of the proper judgment or remit the case to the trial court for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with the statutes governing legal procedure, as shall be deemed necessary to accomplish the ends of justice.

**Cross reference:** For reversible error, see 274.37

The court may reverse in the interest of justice even though proper motions or objections were not made. Judgment reversed where defendant's counsel persisted in asking questions which amounted to testimony on his part and commented on the facts he observed in argument to the jury *Lorenz v. Wolff*, 45 W (2d) 407, 173 NW (2d) 129.

Where the trial court's order for a new trial is ineffective for failure to comply with 270.49, the supreme court will review the record to determine whether it will order a new trial in the interest of justice. *Tuschel v. Haasch*, 46 W (2d) 130, 174 NW (2d) 497.

A new trial will seldom be ordered under this section where there is a default judgment and no record to show that defendant probably should have prevailed, particularly where 269.46 (1) applies. *Collings v. Phillips*, 54 W (2d) 204, 194 NW (2d) 677.

**251.10 Original writs; writs in vacation.** In addition to the writs mentioned in section 3 of article VII of the constitution the supreme court shall have power to issue writs of prohibition, supersedeas, procedendo and all other writs and process not specially provided by statute which may be necessary to enforce the due administration of right and justice throughout the state; and any justice of said court in vacation shall, on good cause shown, have power to allow writs of error, supersedeas and certiorari, and also to grant injunctive orders.

**251.11 Supreme court; judgments; rules; printed case.** (1) The supreme court shall be vested with all power and authority necessary for carrying into complete execution all its judgments and determinations in the matters aforesaid and for the exercise of its jurisdiction as the supreme judicial tribunal of the state, agreeably to the usages and principles of law; and to make, annul, amend, or modify the rules of practice therein from time to time as it shall see fit, not inconsistent with the constitution and laws.

(2) The supreme court may by rule provide that no party in any action or proceeding before the supreme court shall be required to prepare and furnish any printed case or other printed abridgment of the record or of the proceedings theretofore had.

**251.12 Issues of fact and assessments of damages.** Whenever an issue of fact shall be joined or an assessment of damages by a jury be necessary in any action commenced in the supreme court the court may, in its discretion, send the same to some circuit court and it shall be there determined in the same manner as other issues of fact are tried or assessments made, and return be made thereof as directed by the supreme court.

**251.14 Decisions to be written; part of record; certified to United States court; printed for justices.** The supreme court shall give their decisions in all cases in writing, which shall be filed with the other papers in the case; and such decisions and all decisions and opinions delivered by the court or any justice thereof in relation to any action or proceeding pending in said court shall remain in the office of the clerk. Every written opinion or decision of the supreme court which shall have been filed with the clerk shall constitute and be held a part of the record in the action or proceeding in which it shall have been given and filed and shall be certified therewith to any court of the United States to which such action or proceeding or the record thereof may be in any manner certified or removed. The state printer shall print for the use of the justices so many of such decisions and opinions, and at such times, as shall be directed by them.

**251.16 Opinion to be sent to trial court on reversal.** Whenever the judgment or determination of any inferior court shall be reversed, in whole or in part, by the supreme court or an action or proceeding is remanded to the court below for a new trial or for further proceedings the clerk of the supreme court shall transmit to the clerk of the court below, with the remittitur, a

certified copy of the opinion of the supreme court therein; and his fees therefor shall be taxed and allowed with his other fees in the case.

**251.17 Proceedings in criminal cases on reversal.** Whenever any judgment in a criminal action shall be removed by a writ of error to the supreme court and such court shall reverse such judgment because of any defect, illegality or irregularity in the proceedings in such case subsequent to the rendition of the verdict of the jury therein it shall be competent for the supreme court either to pronounce the proper judgment or to remit the record to the court below in order that such court may pronounce the proper judgment.

**251.18 Rules of pleading and practice.** The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice and procedure in judicial proceedings in all courts, for the purpose of simplifying the same and of promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge or modify the substantive rights of any litigant. The effective dates for all rules adopted by the court shall be January 1 or July 1, but in no case shall a rule become effective until 60 days after its adoption. All such rules shall be printed by the state printer and paid for out of the state treasury, and the court shall direct the same to be distributed as it may deem proper. All statutes relating to pleading, practice and procedure may be modified or suspended by rules promulgated pursuant hereto. No rule modifying or suspending such statutes shall be adopted until the court has held a public hearing with reference thereto. The court may establish days certain in each year at which dates the public hearings shall be held. Said hearings shall be held at 1:30 o'clock in the afternoon, or at such other time as the court shall direct. Notice of public hearings shall be given by publication of a class 3 notice, under ch. 985, the expense of the publication to be paid out of the state treasury. Notice shall also be given in the official publication of the state bar of Wisconsin, said notice to be published not more than 60 days, not less than 30 days, before the date of hearing. The state bar of Wisconsin shall not charge the state treasury for publication of this notice. Proposed rules, including changes, if any, in existing rules, shall be set forth in full in the notice. Nothing in this section shall abridge the right of the legislature to enact, modify or repeal statutes or rules relating to pleading, practice or procedure. The judicial council shall act in an advisory capacity to assist the court in performing its duties under this section.

**251.182 Assignment of judges.** The chief justice of the supreme court or an associate justice designated by the supreme court shall keep informed of the status of the administration of judicial business in the courts of the state and may designate and assign active circuit and county judges and county judges qualified under s. 253.195 to serve temporarily in either the circuit or county court and supreme court justices and circuit judges qualified under article VII, section 24 of the Wisconsin constitution to serve temporarily in circuit court.

(1) The supreme court may promulgate rules necessary to accomplish the purposes of this section.

(2) Active judges assigned to serve temporarily in another circuit or county court shall do so.

(3) While acting temporarily in another circuit or county, a judge has the power to hold court, try cases and exercise all the authority of a judge of that court.

History: 1971 c. 46.

**251.19 Department of justice may have cases printed.** In all state cases to be argued in the supreme court by the department of justice, the department may require the printing by the state printer, when necessary, of the briefs and appendices of the department; and the account therefor shall be paid out of the state treasury and charged to the appropriation in s. 20.455 (2) (d).

History: 1971 c. 125 s. 522 (1).

**251.20 Seal.** The supreme court shall have a seal and may direct and from time to time alter the inscription and devices thereon; and the department of administration shall procure such seal as may be ordered. The seal of the court now in use shall be the seal thereof until another is provided hereunder.

**251.21 Duties of clerk.** It shall be the duty of the clerk of the supreme court:

(1) To have and keep the custody of the seal of the court and all books, records and papers thereof, and of all writs, proceedings and papers in any action therein.

(2) To receive and safely keep and pay over or deliver, according to law or the order of the court, all moneys or property deposited or placed in his possession as such clerk.

(3) To furnish to any person requiring the same certified copies of the papers, records, opinions and decisions in his office, upon receiving his fees therefor.

(4) To furnish to the reporter copies of all opinions required by him.

(5) To issue writs and process to persons entitled to the same by law or the rules and practice of the court.

(6) To make a calendar of cases for argument at such time and in such manner and form as the court shall direct.

(7) To give certificates to attorneys on their admission to practice in the court, on receiving the fees therefor; but the fee for a certificate of admission of any graduate of the law department of the University of Wisconsin or Marquette University at Milwaukee shall not exceed \$1.

(8) To perform all other duties required by law or the rules and practice of the court or which may be directed by the court.

**251.22 Fees.** The supreme court shall fix such fees for the services of the clerk as to the court shall seem proper, except when otherwise provided by law. Such fees shall be deposited in the general fund pursuant to s. 20.906.

**251.23 Costs in supreme court.** (1) **DISCRETIONARY ITEMS.** In the supreme court, excepting criminal actions, costs shall be in the discretion of the court. In any civil action or proceeding brought to the court by appeal or writ of error, the prevailing party shall recover costs unless the court shall otherwise order, and such costs, unless fixed at a lower sum by the court, shall be as follows: The fees of the clerk, \$50 attorney's fees, the fees of the clerk below for transmitting and certifying the record, including the sum paid for necessary copies of the minutes of the reporter procured for record preparatory to an appeal or for approval of the transcript, and the sum paid for printing appendices and briefs, not exceeding \$3 per page and in all not exceeding 150 pages.

(2) **MOTIONS FOR REHEARING.** When a motion for rehearing is denied the prevailing party may be allowed attorney's fees, not exceeding \$50, and necessary disbursements, which shall be taxed and inserted in the judgment; when such motion is granted or the moving party secures other substantial relief the same costs may be allowed.

(3) **DAMAGES; COSTS DOUBLED.** The court may adjudge to the defendant in error or respondent on appeal in any civil action, on affirmance, damages for his delay in addition to interest, not exceeding ten per cent on the amount of the judgment affirmed, and may also in its discretion award to him double costs.

(4) **NOTICE OF TAXATION.** The clerk shall tax and insert in the judgment, on the application of the prevailing party, upon four days' notice to the other, the costs, together with the damages allowed, if any. The disbursements shall be stated in detail and verified by affidavit filed.

(4m) **TIME FOR TAXATION.** The clerk, on notice, shall tax costs not less than 20 nor more than 60 days after the decision is filed unless there is a motion for rehearing, in which case costs must be taxed within 60 days after the filing of the decision on that motion.

(5) **EXECUTION FOR COSTS.** On request of the party entitled thereto the clerk shall issue execution for costs taxed and damages allowed, directed to the sheriff of any county designated by such party; and the sheriff shall levy and collect the same and pay over to said clerk his costs and the remainder to the party entitled thereto, and shall return the execution with his doings thereon to the said clerk within ninety days from its date. If such execution be returned satisfied the clerk shall enter satisfaction of the judgment. Alias executions may in like manner be issued from time to time until such judgment be collected.

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

Respondent's request for double costs denied where the only basis for the request was the unsuccessful attempt of appellant to force some liability on respondent. *Kjellsen v Stonecrest, Inc* 47 W (2d) 8, 176 NW (2d) 321.

## RULES OF PRACTICE IN THE SUPREME COURT

### CHAPTER I

#### RECORD AND RETURN

**251.25 Rule (Record, contents).** The appeal record shall be fastened in one or more volumes and filed with the clerk of the supreme court and shall consist of such of the following items as are applicable to the appeal, and arranged as follows:

(1) Summons or other process.

(2) Proof of service.

(3) Complaint, petition, relation, or affidavit initiating the proceedings, with the date of service.

(4) Answer or demurrer, with date of service.

(5) Reply, demurrer, election to take issue, with date of service.

(6) Orders material to the appeal, and papers upon which they are based, and all other papers material to the appeal.

(6m) Instructions to the jury, if any.

(7) The verdict, findings of the court or referee, with orders based thereon, and opinion of the court, if any.

(8) Final determination.

(9) Any order made after judgment, material to the appeal, and the papers upon which the same is based.

(10) Exhibits material to the appeal. Exhibits, whether or not received in evidence,

shall be included in the record if they are deemed material to the appeal by any party or his counsel. Each exhibit shall have on it the name of the plaintiff and the defendant, and also an identification by the court reporter or clerk of the trial court. Exhibits not so material shall not be forwarded by the clerk of the court from which the appeal is taken. Exhibits may be bound into the record if such binding will not prevent their examination without disturbing the balance of the record, or they may be enclosed in a separate envelope or other container on the outside of which shall appear the caption of the cause and a statement by the clerk of the court from which the appeal was taken that the exhibits enclosed are those designated by a party as material to an appeal.

(11) Writ of error or notice of appeal, with the bond or undertaking.

(12) Transcript of reporter's notes (for late filing of transcript, see Rule 251.29).

(13) Certificate of the clerk under the seal of the court from which the appeal is taken, certifying that they are the original papers or copies as the case may be, and that they are transmitted pursuant to the appeal. No further certificate or attestation is necessary. Such record shall be consecutively paged on the left-hand margin.

*Cross reference:* See 274.117 for requirement as to contents of transcript of reporter's notes.

**251.26 Rule (Supplemental return).** The record shall not be accompanied by any paper, other than those specified, or which is not part of the record proper. No document shall be included in the record unless properly certified by the clerk of the court from which the appeal was taken and included in either the return or a supplemental return.

**251.27 Rule (Return to writ).** The return to any writ of error or certiorari shall be by certified copy of the record unless the trial court shall order the original papers to be returned.

**251.28 Rule (Statement of case).** When the questions presented for decision by an appeal can be determined without an examination of all the pleadings, evidence and proceedings in the court below, in lieu of a record as required by Rule 251.25, the parties may prepare and sign a statement of the case showing how the questions for decision arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions involved by the supreme court. The statement shall include a copy of the judgment or order appealed from, a copy of the notice of appeal with

undertaking (or evidence of deposit or waiver of undertaking), filing date and a concise statement of the points to be relied upon by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal shall be approved by the trial court and shall then be certified to the supreme court as the record on appeal.

**251.29 Rule (Filing of record).** The appellant or plaintiff in error shall cause the appeal record to be filed in this court within 20 days after perfecting the appeal or filing the writ. The transcript may be excluded and filed later, but not later than 10 days after the transcript has been approved. The exhibits may be excluded and filed later but not later than 10 days before the date set for oral argument. Any party intending that there be a delayed return of a transcript shall so notify the clerk of this court and opposite party in writing within 20 days after the mailing by the clerk of the notice that the record has been filed. Any party who obtains an extension of time to serve the transcript shall notify the clerk and opposite party thereof.

*Cross reference:* See 274.115 for limitation on time for serving transcript.

**251.30 Rule (Correcting record).** If a record is defective, either party may move for an order to correct the defect.

**251.31 Rule (Correcting defective appeal).** If through mistake, inadvertence, or excusable neglect the appeal has not been perfected, or the transcript is not properly certified so as to permit a decision of the questions presented for review, the appellant will be given reasonable opportunity to correct the error, on such terms as may be just.

## CHAPTER II

### BRIEFS AND APPENDICES

**251.34 Rule (Appellant's brief and appendix).** In calendar causes the appellant or plaintiff in error shall print a brief and appendix in conformity with the following rules:

(1) The front fly leaves of every brief shall contain an index including a synopsis or brief resume of the argument with page references followed by a list of all statutes, cases and other authorities referred to, the cases alphabetically arranged, together with references to the pages where the statutes, cases and other authorities are cited. (For illustration see 200 Wis. 530.)

(2) The brief shall be entitled in the cause, and following the title there shall be a statement

whether an order or judgment is appealed from, the name of the trial court and the name of the trial judge, the date of the commencement of the action and the date when the judgment or order appealed from was entered. On the following page the question or questions involved on appeal or writ of error shall be stated briefly without detail or discussion, without names, dates, amounts or particulars of any kind. Following each question there shall be a statement indicating whether the question was affirmed, negated, qualified or unanswered by the court below. If a qualified answer was given to the question the appellant or plaintiff in error shall indicate briefly the nature of the qualification or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court below. The questions and statements in their entirety should ordinarily not exceed 20 lines and should rarely exceed one page and no other matter shall appear on the page with the statement. (In substance the question or questions should contain the type of matter found in the syllabus to a case. The question or questions should state what is to be decided,—the syllabus states what has been decided.)

(3) After the statement of the questions involved, the facts shall be stated in a clear and concise manner eliminating all immaterial details. Reference shall be made to the page of the appendix for each statement of fact made in the brief as to which there is a possibility of dispute. If reference is made to the record, the page of the record shall be given. When a question raised upon appeal involves a statute so much thereof as is necessary to a decision of the case shall be printed at length.

(4) The statement of facts shall be followed by argument in support of the position of the appellant or plaintiff in error with citations of authority.

(5) In addition to the brief, the appellant or plaintiff in error shall print an appendix or in lieu of it the statement of the case (Rule 251.28). The appendix shall contain, arranged in the following order:

(a) The opinion or decision of the trial court.

(b) Such part and only such part of the pleadings, findings, verdict, judgment or order sought to be reviewed as may be material in the consideration on appeal of the questions stated.

(c) An abridgment of the appeal record, including the transcript, but only so much thereof as is necessary to a consideration of the questions involved. The abridgment of the testimony shall be in narrative form with marginal page references to the record; shall follow the same order as that in which the

testimony was offered and shall indicate whether the testimony was adduced on direct, cross, re-direct or re-cross examination. Asterisks or other appropriate means shall be used to indicate omissions in the instructions or in the testimony of witnesses. The names of witnesses whose testimony is referred to shall be given. An index to the entire record shall appear at the end of the appendix and shall indicate what parts of the record are not printed. As to those parts printed, the index shall specify the page of the appendix where the same may be found.

(d) All exhibits whether printed or not shall be indexed at the end of the appendix, with reference to the page of the record and if printed in the appendix, the page of the appendix where the same may be found. The nature of the contents of the exhibit shall be briefly stated in the index.

(e) The brief and appendix shall be bound together unless the appendix exceeds 100 pages, in which case it may be bound as a separate volume.

Where appellant fails to file an adequate appendix (the instant case involved a divorce) the court will affirm without opinion and, on motion, impose double costs. *Martin v. Martin*, 46 W (2d) 218, 174 NW (2d) 468.

Comments on briefing and oral argument in the supreme court. *Wilkie*, 43 WBB, No 1.

**251.35 Rule (Respondent's brief).** The brief of the respondent shall contain:

(1) Upon the front fly leaf an index including a synopsis or brief resume of the argument followed by a list of all statutes, cases and other authorities referred to, the cases alphabetically arranged, together with references to the pages where the statutes, cases and other authorities are cited. (For illustration see 200 Wis 538.)

(2) The title to the cause following which there shall be a statement of the questions involved so far as the respondent disagrees with the statement of the questions involved made by the appellant or plaintiff in error.

(3) A statement of such facts and only such facts as are necessary to correct or amplify the statement of facts made by the appellant or plaintiff in error in his brief. Reference shall be made to the page of the appendix or to the record for each statement of fact made. The propositions and argument of the appellant or plaintiff in error shall be replied to so far as practicable in the order in which such propositions or argument are presented in the brief of the appellant or plaintiff in error. Additional propositions may be advanced when necessary to a complete presentation of respondent's position.

(4) A supplemental appendix containing an abridgment of such portions of the appeal record, including the transcript, which the respondent deems necessary and material to a consideration

of the questions involved and which have not been printed in the appendix of the appellant or plaintiff in error. As to form and substance the supplemental appendix shall conform to Rule 251.34 (5) (c).

(5) Such exhibits or parts of exhibits not printed by the appellant or plaintiff in error as respondent may desire to bring to the attention of the court. These shall be indexed, the page of the record where they are described given and the nature of the contents of the exhibit shall be briefly stated in the index at the end of the appendix.

(6) Ordinarily the brief and supplemental appendix shall be bound in one volume. If the supplemental appendix exceeds 100 pages it may be bound as a separate volume.

**251.36 Rule (Reply briefs).** The appellant or plaintiff in error may file a reply brief, restricted to matter in rebuttal, and set forth in an additional appendix thereto such parts of the record or such exhibits as he may wish the court to read in view of the parts printed by the respondent in the supplemental appendix to his brief. Such reply brief, exclusive of index, list of authorities and appendix, if any, shall be limited to 10 pages except by prior permission of the court.

**251.37 Rule (Appendix references).** Reference to the appendix printed by the appellant or plaintiff in error may be indicated by A-Ap. p. 2. The appendix printed by the respondent may be referred to as A-R. p.2.

**251.38 Rule (Page limitation on briefs).** (1) Each brief shall be limited to 40 pages, exclusive of the appendix, index, synopsis of argument, list of authorities and texts of statutes and constitutional provisions. No brief may be filed which exceeds such limitation, except by prior permission of the court. Application for such permission may be made in letter form, addressed to the clerk of the court, specifying the reasons why extra pages are required and the number of pages requested.

(2) Where it satisfactorily appears that the rules relating to the preparation and printing of a brief, including the appendix, have been flagrantly disregarded or there is an absence of a good faith attempt to comply therewith, the court may in its discretion deny to or impose costs against the offending party or strike his brief from the files.

**251.39 Rule (Printing specifications).** Briefs and appendices shall be printed plainly with black ink in type not smaller than 10 point nor larger than 12 point, and leaded with a 2-

point lead, on eggshell paper, properly paged at the top, with the printed portion of a page 7 inches long and 4 1/4 inches wide centered in a page trimmed to a size 7 inches wide by 9 inches long and saddle-stitched when practicable, bound in a paper or cloth cover, having the title and calendar number of the case and designation of the brief printed in appropriate type on the outside and shall bear the name and address of counsel presenting the same. In the appendix, record page references shall be printed in the left-hand margin. The term "printed" as used herein includes printing by offset process.

**251.40 Rule (Briefs amici curiae).** Briefs amici curiae may be filed only after special permission granted by the court. Requests for such permission will be made in letter form, addressed to the clerk. Each brief amicus curiae will comply with these rules as to printing, format, content and number of copies filed. Each party filing such a brief will furnish 3 copies thereof to each attorney who has appeared for a party to the cause, and file 35 copies, together with proof of service, not later than 10 days prior to the date of oral argument. Oral argument for amici curiae is not permitted.

### CHAPTER III

#### SERVICE OF PAPERS

**251.42 Rule (Service by mail).** Service of all papers may be made by mail, first class postage prepaid, properly addressed to the person to be served. Mailing shall be made at least 3 days before the time required for personal service.

**251.43 Rule (Service of briefs).** Not more than 40 days after the record is filed in a cause in which there is no transcript or in which the transcript is filed with the record, or not more than 40 days after the transcript is filed in a cause in which such transcript is approved after the record is filed, the appellant or plaintiff in error shall serve 3 copies of his brief and appendix upon the opposite party. Upon the filing in the supreme court of the record the clerk shall mail a notice of such filing to the attorneys of record in the cause. Not more than 30 days after the service of appellant's or plaintiff in error's brief and appendix, the opposite party shall serve upon the appellant or the plaintiff in error 3 copies of his brief and supplemental appendix, if any. Not more than 15 days after service of the brief of the opposite party, the appellant or plaintiff in error may serve a reply brief and additional appendix, if any, upon the opposite party. No further brief shall be served

or received except as provided unless permission be first granted. Thirty-five copies of each brief and each appendix, together with proof of service thereof, shall be filed not later than 5 days after the time within which it is required to be served.

**251.44 Rule (Service in criminal cases).**

In criminal cases except where the state is appellant, service of brief and appendix of appellant or plaintiff in error shall be upon the attorney general. Briefs and appendices in criminal cases, including service thereof, shall be governed by the rules that apply to civil cases except that appendices may be dispensed with by stipulation of the parties or by order of the court.

**251.45 Rule (Enlargement of time).**

The time prescribed by these rules for any act, except for the making of a motion for a rehearing, may be enlarged by the court for cause, on motion. The time for serving and filing briefs and appendices may be enlarged by stipulation of the parties, but if such enlargement will interfere with the assignment of the cause for argument in its normal turn, the approval of the court must be obtained.

## CHAPTER IV

### CALENDAR AND ASSIGNMENTS

**251.48 Rule (Preparation of calendar).**

All causes in which the record shall have been filed on and after March 1 in each year and prior to March 1 in the succeeding year, are assigned to the August calendar of the current year in the order in which the records are filed in the office of the clerk of the court. Any cause may be placed upon the current calendar or advanced for hearing at any time in which it is shown that the interests of the state, the people at large, or of any municipality are affected, or an important constitutional question is seriously raised, or an extraordinary exigency is involved and it is further shown that delay would be prejudicial to the accomplishment of justice.

**251.49 Rule (Assignment for argument).**

Within 10 days after the commencement of the August term, the clerk shall prepare a list of the causes then on the calendar, arranging all civil causes in the order of their filing, and arranging all criminal causes in their order at the foot. During the term he shall when directed by the court prepare a list of the causes subsequently filed.

A case shall be subject to being set for argument on any date which is at least 30 days after the date of filing of the appellant's or

plaintiff in error's brief and appendix. Not less than 30 days before the time set for argument of cases on an assignment, the clerk shall send to each attorney appearing in any case on the assignment a list of such cases stating the day on which each case will be called for argument.

**251.50 Rule (Original actions).**

Actions and proceedings brought under the original jurisdiction of this court shall be heard when and as directed by the court.

**251.51 Rule (Continuance over the term).**

(1) Cases on the calendar not reached for consideration by the court during the term shall automatically be continued to the next calendar.

(2) If a case has been so continued to the next calendar, and is not ready for consideration during such second term, it shall be summarily dismissed without notice if the appellant's brief and appendix have not been filed, or summarily reversed without notice if the respondent's brief is in default.

History: Sup. Ct. order, 55 W (2d) vii.

**251.52 Rule (Order of assignment).** The calendar causes shall be assigned for argument at such time and in such order as the court may direct.

## CHAPTER V

### ARGUMENT OF CASES

**251.54 Rule (Summary disposition).**

After the briefs of the appellant or plaintiff in error and the respondent have been filed, each case will be pre-screened by the court and it will decide which cases will be placed on the summary calendar or the argument calendar. Cases placed on the summary calendar will be decided on briefs, without oral argument, and without prior notice to the parties or their attorneys.

History: Sup. Ct. order, 55 W (2d) viii.

**251.55 Rule (Submission on briefs).**

Causes may be submitted on either or both sides on printed briefs and appendices, seasonably served and filed, but the court may, in its discretion, require oral arguments.

**251.56 Rule (Disposition if both parties in default).**

If neither side of a cause is submitted or presented when reached for argument, it will be dismissed or continued, in the discretion of the court.

**251.57 Rule (Disposition if respondent in default).** When a cause is submitted, or presented by counsel for appellant or plaintiff in error, but not by the opposing party, the judgment or order appealed from may be reversed as of course, without argument.

While the supreme court has considered the merits of an appeal and declined to reverse a judgment of divorce as of course although no brief has been filed by the respondent nor appearance nor argument made, the principal reason for its doing so is the strong public interest in actions affecting marriage and the custody and support of minor children. *Quandahl v Quandahl*, 49 W (2d) 481, 182 NW (2d) 225

**251.59 Rule (Content of argument).** In opening the oral argument appellant shall briefly state the nature of the action, the result in the court below, and the points upon which reversal is sought. No counsel shall read in extenso from briefs or written argument, nor testimony from the record. Decisions relied upon may be stated in substance but not read.

**251.60 Rule (Time limitations for argument).** (1) Except by leave of the court, oral argument is limited to half an hour on each side. If there are several parties with differing interests on the same side, counsel for such parties may request allowance of 45 minutes for the argument on behalf of all such parties. Any request for additional time shall be presented to the clerk by letter (copy to be sent opposing counsel), not less than 10 days before the time set for argument, setting forth in detail reasons why the additional time requested should be allowed. Oral argument on a cause will not be heard on behalf of any party for whom no brief has been filed, unless otherwise ordered by the court. The appellant shall have the right to open and close the oral argument, but this shall not serve to enlarge the appellant's allotted time.

(2) In a case which involves an appeal from an order denying summary judgment, when the issue is whether or not there was a fact question, or a case which involves an appeal from an order overruling a demurrer, argument, if allowed, is limited to 15 minutes on each side, and the appellant shall reserve from his 15 minutes any time, not exceeding 5 minutes, he desires for rebuttal.

History: Sup Ct. order, 55 W (2d) viii.

**251.61 Rule (Order of argument).** On each day of a session of the court cases are subject to call as specified in the notice of call for argument. All cases not called on the day for which they are set will be called in their order on succeeding days.

**251.62 Rule (Reply brief after argument).** If, at the time of argument, the time for filing a

reply brief by appellant has not expired, appellant's counsel may, during his argument, request permission of the chief justice to file a reply brief after argument.

History: Sup Ct order, 55 W (2d) viii.

## CHAPTER VI

### MOTIONS

**251.65 Rule (Motion for rehearing).** Every motion for rehearing shall be filed with the clerk and served upon opposing counsel within 20 days after the decision is filed, and the clerk shall retain the papers until the expiration of such period, unless all parties interested consent to sooner remit the same.

**251.66 Rule (Retention of record).** The papers in any cause wherein a motion for a rehearing is made shall be retained until the motion shall have been disposed of.

**251.67 Rule (Argument on rehearing).** A motion for rehearing shall not be argued orally, but shall be submitted on printed arguments, of which 35 copies shall be furnished to the clerk. Except by prior permission of the court, such argument shall be limited to 10 pages, exclusive of index and list of authorities.

**251.68 Rule (Service of brief in support of rehearing).** The printed arguments in support of the motion shall be served and filed within 30 days after the decision, and in default thereof the motion shall be deemed to have been waived.

**251.69 Rule (Service of brief in opposition to rehearing).** The printed arguments in opposition to the motion shall be served and filed within 40 days after the decision, at which date the motion shall be deemed to have been submitted.

**251.70 Rule (Orders final after 20 days).** No motion as to any final determination made by the court, except a motion to correct mistakes in the record of this court, will be heard unless made within 20 days after such determination.

**251.71 Rule (Motions other than motions for rehearing).** All motions and petitions, other than motions for rehearing, shall be reduced to writing, and shall be supported by a memorandum of authorities, which may be typewritten. Each such memorandum shall contain a summary of the material facts and citations to the authorities relied on. The moving or petitioning party shall serve counsel for each opposing party with a copy of the motion or

petition, together with one copy of the supporting memorandum, and file with the clerk the original motion or petition, proof of service thereof, and the original and 7 copies of his supporting memorandum. Within 10 days after service of the motion or petition, each opposing party may file with the clerk an original and 7 copies of an opposing memorandum of authorities, together with proof that he has mailed a copy of such memorandum to the moving party. At the expiration of such 10-day period, the clerk shall submit the motion or petition to the court, and no oral argument shall be permitted, except by order of the court or a justice thereof.

When the court or a justice, on ex parte application, shall issue a writ, returnable on a day certain, or an order to show cause on a day certain why a motion or petition should not be granted, the supporting memorandum shall be served with the writ or order and copies of the opposing memorandum of authorities shall be served and filed at or before the time set for return or hearing.

**251.72 Rule (Allowances in actions affecting marriage).** In actions affecting marriage pending in this court, no allowance for suit money, counsel fees or disbursements in this court, nor for temporary alimony or maintenance of the wife or children during the pendency of the appeal will be made in this court.

Such allowances, if made at all, shall be made by the proper trial court upon motion made and decided after the entry of the order or judgment appealed from and prior to the return of the record to this court, provided, that if such allowance be ordered before the appeal is taken such order shall be conditioned upon the taking of the appeal and shall be without effect unless and until the appeal be perfected.

**251.73 Rule (Motion to docket and dismiss).** When a notice of appeal has been filed with the clerk of the trial court or a writ of error has been issued but no record on such appeal or writ of error has been forwarded, as required by Rule 251.25, any interested party may file a motion to docket the cause in the supreme court and dismiss the appeal. Such motion shall follow the procedure prescribed in Rule 251.71 excepting that an affidavit as to service and filing of the notice of appeal or issuance of the writ of error and failure to forward the record shall be substituted for the memorandum of authorities. The motion papers shall also contain a copy of the notice of appeal or writ of error.

## CHAPTER VII

## COSTS AND PENALTIES

**251.75 Rule (Proof of timely service of briefs).** No costs shall be taxed for printing briefs and appendices unless affirmative proof is made that they were served and filed within the time prescribed by the rules. (See also Rule 251.38.)

**251.76 Rule (Penalty for misleading citations).** No costs of printing shall be allowed for any brief containing a manifest miscitation of authority or a palpably misleading quotation from any opinion or textbook, not corrected by the author before submission of the cause.

**251.77 Rule (Dismissal for want of prosecution).** If the brief and appendix of the appellant or plaintiff in error are not served and filed within the time and in the manner required by these rules, the court may in its discretion dismiss the appeal or may permit late filing upon terms.

**251.79 Rule (Permission to file record late).** When a proper return shall have been filed before the final determination of a motion to dismiss for want of such return, the motion may be denied upon payment of costs by the opposite party, in the discretion of the court.

**251.80 Rule (Costs for supplemental return).** When a supplemental return is ordered upon application of a party, and the defect in the original return is attributable to the fault of the opposing party, the court may, in its discretion, order costs to be paid to the moving party; payment to be enforced as directed.

**251.81 Rule (Disrespectful briefs).** No costs shall be taxed for printing any brief containing matter disrespectful to this court, or the trial court, or to opposing counsel; and the court will not consider such a brief, and of its own motion will strike it from the files.

**251.82 Rule (Disrespectful argument).** If an attorney, in addressing the court, indulges in language disrespectful to this court or to the trial court, or to the opposing counsel or party, he will be prohibited from further addressing the court in the cause, without prejudice to any other proceeding to inflict punishment for such misconduct.

**251.83 Rule (Costs on denial of rehearing).** When a motion for a rehearing, or a motion in the nature of a motion for a rehearing,

is denied, costs will be allowed to the prevailing party.

**251.84 Rule (Attorney's fees).** When costs are awarded, they shall include attorneys' fees in the sum of \$50, unless the court orders otherwise.

**251.85 Rule (Costs for infraction of rules).** For infraction of any of the rules of this court, for which no penalty is expressly provided, the offending party may be mulcted in costs, in the court's discretion, for the benefit of the opposing party.

## CHAPTER VIII

### MISCELLANEOUS

**251.88 Rule (Appointed counsel and guardians ad litem).** Attorneys and guardians ad litem, appointed by the court below, will be deemed to continue in service until the contrary appears.

**251.89 Rule (Lists of delinquent appeals).** (1) After May 15 of each year the court may, sua sponte, summarily dismiss any case in which it appears from the records of this court that the time for filing the appellant's or plaintiff in error's brief has expired. The clerk shall mail to counsel for the appellant or plaintiff in error in each such case a written notice that, unless within 15 days from the date of such notice, the brief is filed or good cause shown for failure to file, the appeal or writ of error will be dismissed.

(2) After May 15 of each year the court may, sua sponte, summarily dispose of by reversal or other means, without further notice, any case in which it appears from the records of this court that the time for filing the respondent's or defendant in error's brief has expired. The clerk shall mail to counsel for each respondent or defendant in error in each such case a written notice that, unless within 15 days from the date of such notice, the brief is filed or good cause shown for failure to file, the judgment or order appealed from may be reversed, without further notice.

History: Sup Ct. order, 55 W (2d) viii.

**251.90 Rule (Clerk's fees).** (1) Except as otherwise provided by law, the fees to be charged by the clerk of this court are as follows:

(a) For filing and docketing each case on appeal, a writ of error, or any other proceeding, \$25; a petition for leave to commence an original action or an application to docket and dismiss, \$10; each motion for rehearing, \$25.

(b) For making a copy of any record, paper, or opinion of the court, and comparison thereof, 40 cents for each page.

(c) For comparing for certification of a copy of any record, entry or paper when such copy is furnished by the person requesting its certification, 10 cents for each page.

(d) For comparing any photographic reproduction of any original record, entry or paper, when furnished by the person requesting its certification, 5 cents for each page.

(e) For a certificate and seal, \$1.

(f) For an admission to the bar and certificate under seal, \$18.

(2) The state is exempt from payment of the above fees, except that the clerk shall not be obligated to supply the state with free copies of opinions.

(3) The clerk may refuse to file, docket, record, certify or render any other service, without prepayment of the fees in sub. (1).

History: Sup Ct order, 55 W (2d) ix.

**251.91 Rule (Remand on reversal).** When a judgment is reversed, the cause, if tried by the court, will ordinarily be remanded for final judgment, and if tried before a jury, for a new trial; but if it appear in a jury cause that there has been a full trial and that justice will be best subserved by the direction of a judgment, the cause will be remanded for final disposition according to the right of the matter, whether such judgment will have the formal verdict of a jury as a basis therefor or not.

**251.92 Rule (Delivery and disposition of visual aids).** All maps, charts or models which are not exhibits in the action and which are constructed or intended for the mere purpose of illustrating the issues in any action or proceeding pending in this court shall be placed in the custody of the clerk of the supreme court prior to the oral argument, free of expense to such clerk and, also without expense to such clerk, taken away within 30 days after expiration of the time for retention of the record in this court and in default thereof the same shall be turned over to the marshal of this court for destruction, or other permanent disposition.

**251.93 Rule (Affirmance without opinion).** In cases where the order or judgment is affirmed, opinions will not hereafter be written unless the questions involved be deemed by this court of such special importance or difficulty as to demand treatment of an opinion. A table of the cases affirmed without opinion, containing the titles, statement of the nature of each, the courts from which they came, dates there and here

decided, and names of respective counsel, shall be printed in the Reports.

**251.94 Rule (Application for admission on foreign license).** Applications by attorneys for admission to the bar pursuant to section 256.28 (3), together with supporting proofs, must be filed with the clerk at least 60 days before they are acted upon. Each applicant shall,

at the time of filing his application, deposit with the clerk the sum of \$100 or such other amount as may be required for such investigation as may be necessary to satisfy the court that he is of good moral character and has been engaged in the actual practice of the law in the state or territory from which he comes for the required period. Applications shall be in the form prescribed by the court.