CHAPTER 256.

GENERAL PROVISIONS CONCERNING COURTS OF RECORD, JUDGES, ATTORNEYS AND CLERKS.

256.01 Powers of courts. The several courts of record of this state shall have power:

(1) To issue process of subpœna, requiring the attendance of any witness, residing or being in any part of this state, to testify in any matter or cause pending or triable in such courts.

(2) To administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of such court.

(3) To devise and make such writs and proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.

256.02 Justices and judges and justices of peace: oath of office; ineligibility to other office; conservators of peace; administer oaths; take acknowledgments. (1) Every person elected or appointed justice of the supreme court, or judge of the circuit court, or judge of a county court, or judge of a superior or municipal court, or judge of the district court or civil court of Milwaukee county, or judge of any other court of record, or justice of the peace, shall take, subscribe, and file the following oath:

STATE OF WISCONSIN, }
County of .... } ss.

I, the undersigned, who have been elected (or appointed) to the office of ...., but have not yet entered upon the duties thereof, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Wisconsin; that I will administer justice without respect to persons and will faithfully and impartially discharge the duties of said office to the best of my ability.

Subscribed and sworn to before me this .... day of ...., 19..

....
(Signature)

(2) The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he was elected, or appointed, except as provided by section 49.51 (1).

(3) The judges of such courts shall be conservators of the peace, and have power to administer oaths and take the acknowledgments of deeds and other written instruments throughout the state. [*1943 c. 180; 1947 c. 584*]

256.03 What acts may be punished as criminal contempts. Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts and no other:

(1) Disorderly, contemptuous or insolent behavior committed during its sittings, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due its authority.

(2) Any breach of the peace, noise or disturbance directly tending to interrupt its proceedings.

(3) Wilful disobedience of any process or order lawfully issued or made by it.

(4) Resistance, wilfully offered, by any person to the lawful order or process of the court.

(5) The contumacious and unlawful refusal of any person to be sworn as a witness; and when so sworn, the like refusal to answer any legal and proper interrogatory.

(6) The publication of a false or grossly inaccurate report or copy of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decisions had in such court.

(7) The practicing as an attorney in such court without being first licensed as such in the manner provided by law.

Note: A defendant's violation of a temporary injunction, restraining him from selling spirits at higher than ceiling prices, was a criminal contempt, as a wilful disobedience of an order lawfully issued. Bowles v. Davidson, 246 W 242, 16 NW (2d) 802.

In proceedings for criminal contempt, where a warrant or attachment has been issued, prosecution is regarded as a criminal action and hence defendant has the right to be released on bail under sec. 8, art. I, Const. At defendant's request he must be taken before a magistrate pursuant to 361.04 to give recognizance for his appearance before the court which issued the attachment, on the return date thereof. If the warrant is returnable forthwith and no bail is given, the sheriff is required to take the prisoner before the court as soon as he reasonably can, and unreasonable delay may constitute false imprisonment. 30 Atty. Gen. 199.

256.04 Contempt punished summarily. Contempts committed in the immediate view and presence of the court may be punished summarily; in other cases the party shall be notified of the accusation and have a reasonable time to make his defense.

Note: Contempt proceedings, commenced by the issuance of an order based on an affidavit requiring the defendant to show cause why he should not be punished as for contempt for violation of the injunction in question, and notifying him of the accusation, and giving him 2 months in which to make his defense, satisfied the calls of this section. Bowles v. Davidson, 246 W 242, 16 NW (2d) 802.

256.05 Contempt commitment. Whenever any person shall be committed for any contempt specified in this chapter the particular circumstances of his offense shall be set forth in the order or warrant of commitment.

256.06 Punishment for contempt. Punishment for contempt may be by fine or by imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine shall in no case exceed the sum of two hundred and fifty dollars nor the imprisonment thirty days; and when any person shall be committed to prison for the nonpayment of any such fine he shall be discharged at the expiration of thirty days.

256.07 Criminal prosecution for contempt. Persons punished for a contempt, under the preceding provisions, shall, notwithstanding, be liable to indictment or information for such offense; but the court before which a conviction shall be had on such indictment or information shall, in forming its sentence, take into consideration the punishment before inflicted. Nothing contained in the preceding sections of this chapter shall be construed to extend to proceedings against parties or officers as for any contempt for the purpose of enforcing any civil right or remedy.

256.08 Vacancy in judgeship not to affect suits. No process, proceeding or action, civil or criminal, before any court of record shall be discontinued by the occurrence of any vacancy in the office of any judge or of all the judges of such court, nor by the election of any new judge or judges of any such court, but the persons so elected shall have power to continue, hear and determine such process, proceedings or action as their predecessors might have done if no new election had been held.

Note: See note to section 196.41, citing State ex rel. Pardeeville Electric Light Co. v. Sachtjen, 245 W 26, 13 NW (2d) 538.

256.09 Failure to hold term not to affect suits. No process issued or action or proceeding in any court of record shall be discontinued by reason of such court not having been held at any stated term thereof or by reason of any term of such court having been altered; but such process shall be deemed returnable at the term which shall be held next after such failure or at the term established by such alteration, and such action or proceeding shall be continued to such next term or to the term established by such alteration, as the case may be.

256.10 Nor neglect to adjourn. No omission to adjourn any such court from day to day, previous to the final adjournment thereof without day, shall vitiate any proceedings in such court; and the adjournment of any court before the expiration of its term shall not affect the return or service of any writ issued prior or subsequent to such adjournment.

256.11 [*Repealed by Supreme Court Order, effective Jan. 1, 1938*]

256.12 Adjournment to another place. Whenever it shall be deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity, to hold any court at the time and place appointed therefor the justices or judges of the court may appoint any other place within the same county and any other time for holding the same; and the said adjourned session shall be taken as part and continuance of said term, and all proceedings in the said court may be continued at said adjourned times and places and be of the same force and effect as if said court had continued its sessions at the place it was holden before such adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the same, and shall be published by advertisement in some newspaper or in such other manner as may be required in the order.

256.13 Continuances; legislative privilege. When a party or an attorney for any party to any action or proceeding in any court or any commission, is a member of the Wisconsin legislature or is president of the senate, in session, such fact shall be sufficient cause for the adjournment or continuance of such action or proceeding, and such adjournment or continuance shall be granted without the imposition of terms.

256.14 Sittings public. The sittings of every court shall be public and every citizen may freely attend the same, except when otherwise expressly provided by law on the examination of persons charged with crime; provided, that when in any court a cause of a scandalous or obscene nature is on trial the presiding judge or justice may, in his discretion, exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses.

256.15 No court on legal holiday. No court shall be opened or transact business on the first day of the week, the fourth day of July, Christmas or the day on which any general election shall be held unless it be for the purpose of instructing or discharging a jury or of receiving a verdict and rendering a judgment thereon; but this section shall not prevent the exercise of the jurisdiction of any magistrate when it shall be necessary, in criminal cases, to preserve the peace or arrest offenders. Whenever it shall happen that the time fixed by law for holding any term of any court of record shall be upon a legal holiday the clerk of such court or the judge thereof shall open and adjourn the same until the next day, and all matters returnable on that day shall be held continued until such next day; but whenever any such holiday, other than the fourth of July, Christmas and the day on which any general election shall be held, shall occur during the term of any court of record, said court may, in its discretion, proceed with its business thereon in like manner and with like effect as upon any other day.

Note: Justice of peace may not set bail on Sunday or legal holiday set out in this section. 26 Atty. Gen. 185.

256.16 Memorial day; veterans to be given leave of absence on. (1) The head of every department of the state government and of every court of the state, every superintendent or foreman on the public works of the state, every county officer, and the head of every department or office in any town, village, or city, or other political subdivision, shall give leave of absence with pay for twenty-four hours on the thirtieth day of May of each year, or on such other day as may by law be designated as "Memorial Day," to every person in the employ of the state or any county, town, village or city therein, who has at any time served in and been honorably discharged from the army, navy, or marine corps of the United States. A refusal to give such leave of absence to one entitled thereto, shall constitute neglect of duty.

(2) In all cities, however organized, where the nature of the duties of the several departments of government of such cities is such as to necessitate the employment of members of such departments on Memorial day, the head of each such department shall arrange and assign such necessary work in such a manner as to permit the largest possible numbers of employes of such department to be off duty either the whole or part of Memorial day.

256.17 Legal holidays. January 1, February 12, February 22, May 30, July 4, October 12 (which shall be known as "Landing Day" in commemoration of the landing of Columbus), November 11, December 25, the day appointed by the governor as Labor Day and by the governor or the president of the United States as a day of public thanksgiving in each year, the day of holding the September primary election, and the day of holding the general election in November, are legal holidays. On Good Friday the period from 11 a. m. to 3 p. m. shall uniformly be observed for the purpose of worship. In every city of the first class the day of holding any municipal election is a legal holiday, and in

every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties containing a city of the first class the county board may by ordinance provide that all county employes shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employes whose duties require that they work on such days be given equivalent time off on other days. Whenever any of said days shall fall on Sunday the succeeding Monday shall be the legal holiday. [*1931 c. 17; 1933 c. 41; 1941 c. 39; 1945 c. 190, 232, 506*]

Note: Under this section both the governor and the president may designate a day of thanksgiving and both days designated are legal holidays. 28 Atty. Gen. 605.

It is the purpose of 256.17 that the day of the primary election is a legal holiday irrespective of whether the election is held in August or September. 33 Atty. Gen. 123.

256.175 Centennial of Wisconsin's admission to statehood. May 29, 1948, the hundredth anniversary of Wisconsin's admission to statehood, is a legal holiday. [*1947 c. 92*]

256.18 Process, etc., to be in English. All writs, process, proceedings and records in any court within this state shall be in the English language, except that the proper and known names of process and technical words may be expressed in the language heretofore and now commonly used, and shall be made out on paper or parchment in a fair, legible character, in words at length and not abbreviated; but such abbreviations as are now commonly used in the English language may be used and numbers may be expressed by Arabic figures or Roman numerals in the usual manner.

256.19 Judges disqualified, when. In case any judge of any court of record shall be interested in any action or proceeding in such court or shall have acted as attorney or counsel for either of the parties thereto such judge shall not have power to hear and determine such action or proceeding or to make any order therein, except with the consent of the parties thereto.

Note: The trial judge was not disqualified to try a stockholder's derivative action merely because the judge's wife owned shares of preferred stock in a corporation, which was not a party to the action but was a subsidiary of a corporate defendant. Goodman v. Wisconsin Electric Power Co. 248 W 52, 20 NW (2d) 553.

Interest of circuit judge as depositor in defunct bank is probably such as would disqualify him from presiding in proceedings to liquidate such bank. 26 Atty. Gen. 38.

256.20 Judge not to review case on appeal. No judge of an appellate court or of any court to which a writ of certiorari or of error shall be returnable shall decide or take part in the decision of any cause or matter which shall have been determined by him, while sitting as a judge of any other court, unless there shall not be a quorum without him.

256.21 Judge not to have partner or be interested in costs. No judge shall have a partner practicing in the court of which he is a judge; nor shall any judge be directly or indirectly interested in the costs of any action that shall be brought in the court of which he is a judge except in those actions in which he shall be a party or be interested.

256.22 Not to act as attorney, etc. No judge of the circuit court, while holding such office, shall be in any manner engaged or act as attorney or counsel in any action, cause or proceeding in or which he has good reason to believe will be brought in any of the courts of this state, nor give advice or opinion therein; and no judge, court commissioner or other judicial officer shall be allowed to give advice to parties litigant in any matter or action pending before such judge or officer, or which he has reason to believe will be brought before him for decision, or draft or prepare any papers or other proceedings relating to any such matter or action except when expressly authorized by law; and no judge, court commissioner or other judicial officer shall be allowed to demand or receive any fees or compensation for services as such judge, commissioner or judicial officer, except such as are expressly given by law, upon penalty for any violation hereof of removal from office.

256.23 Court commissioner, when disqualified. A court commissioner, or any judge acting as such, shall not act or take part in the decision of, or make any order in any matter or proceeding in which he is a party, or in which his rights would be in any manner affected by his decision or order thereon, or in which he is interested, or in which his law partner, or any person connected with him as employer, employe, or clerk, or in the law business in any manner, shall be interested or appear as a party, agent, attorney or counsel. Any court commissioner, or judge, acting as such, violating this section shall forfeit twenty-five dollars for each such violation, and shall also be subject to removal from office.

256.24 Liability of judicial officers. The judges of the circuit courts, of the county courts and of other courts of record and court commissioners shall be held personally liable to any party injured for any wilful violation of the law in granting injunctions and appointing receivers, or for refusing to hear motions to dissolve injunctions and to discharge receivers; provided, such motions are made in accordance with the rules of law or such rules as may be promulgated by the supreme court.

256.25 Money in court, how deposited. The judge of any court of record on the application of a party to any action or proceeding therein who has paid into court the sum of one thousand dollars or more in such action or proceeding may order such money to be deposited in a safe depository until the further order of the court or judge thereof. After such money has been so deposited it shall be withdrawn only upon a check signed by the clerk of the court pursuant to whose order the deposit was made and upon an order made by such court or the judge thereof.

256.26 Court officers, liability of to arrest. The officers of the several courts of record shall be liable to arrest and may be held to bail in the same manner as other persons, except during the actual sitting of any court of which they are officers; and when sued with any other person such officers shall be liable to arrest and may be held to bail as other persons during the sitting of the court of which they are officers; but no attorney or counselor shall be exempt from arrest during the sitting of a court of which he is an officer unless he shall be employed in some case pending and then to be heard in such court.

256.27 Appearance by attorney. (1) AUTHORIZED. Every person of full age and sound mind may appear by attorney in every action or proceeding by or against him in any court except felony actions, or may, at his election, prosecute or defend the same in person.

(2) SERVICE OF NOTICE. Upon the service of notice of appearance or retainer generally, by an attorney for any party, any other party may file such notice and have the appearance of such party entered as of the time when such notice was served.

(3) SUBSTITUTION OF ATTORNEYS. No order for the substitution of an attorney for a party shall be made without consent signed by such party and his attorney; or for cause shown and upon such terms as shall be just, and on such notice as the court or judge shall direct. [*Court Rule V s. 1; Court Rule VIII; Supreme Court Order, effective Jan. 1, 1934*]

Note: An attorney at law may not affect the rights of his client by causing a summons to be issued without the authority of the client. Peplinsky v. Billings, 213 W 651, 252 NW 342.

As to what constitutes a general appearance see note to 278.01, citing Evans v. Orgel. 221 W 152, 266 NW 176.

A general appearance waives all objections to any defects in the form or service of process. State ex rel Walling v. Sullivan, 245 W 180, 13 NW (2d) 550.

256.28 Attorneys; bar commissioners; license; disbarment. No person shall be admitted or licensed to practice as an attorney of any court of record except in the manner following:

(1) ADMISSION OF LAW SCHOOL GRADUATES, LIST OF SCHOOLS. Any person of full age and good moral character who is a citizen of the United States, a resident of this state and a graduate of any law school in this state which law school was at the time of his graduation approved by the council of legal education and admission to the bar of the American Bar Association, as shown by the records of the clerk of the supreme court, shall upon the production of his diploma be admitted to practice in all the courts of this state by the supreme court and when such court is not in session, by one of the justices thereof, by an order signed by such justice and filed with the clerk of said court. The clerk of the supreme court shall compile a record of all law schools in this state which are approved by the council of the American Bar Association on legal education and admission to the bar, together with the date of such approval, and those that are not approved; and such record so compiled shall constitute an official record of the supreme court, and proof of the fact that the law schools therein stated as approved by the council of the American Bar Association on legal education and admissions to the bar were so approved and at the times therein stated.

(2) ADMISSION ON CERTIFICATE OF BAR COMMISSIONERS. Every person of full age, who is a citizen of the United States and a resident of this state, of good moral character and otherwise qualified, shall be admitted to practice in all the courts of this state, by the supreme court, upon the production of the certificate of the board of state bar commissioners, signed by the president and secretary of the said board, and may be so admitted when such court is not in session, by one of the justices thereof upon the production of such certificate, by an order signed by such justice and filed with the clerk of said court.

(3) ADMISSION ON PROOF OF PRACTICE ELSEWHERE. Any person of full age, who shall have been admitted to practice in the court of last resort of any other state or territory or the District of Columbia, and who shall have become a resident of this state, and is of good moral character, may be admitted to practice in the courts of this state by the supreme court, upon filing with the clerk of the supreme court his written application therefor, and the certificate of his admission to practice in such court of last resort, in such other state or territory or the District of Columbia, and satisfactory proof that he is of good moral character, and has been engaged in actual practice in such other state

or territory or the District of Columbia or in the courts of the United States, for 5 years, within the last 8 years prior to filing his application. Provided, time spent by the applicant in active service in the armed forces during war shall be disregarded. The certificate of the judge of any court of record in such other state or territory or the District of Columbia or court of the United States, before whom such applicant has practiced, under the seal of such court, shall be deemed sufficient proof of such practice in such state or territory or the District of Columbia or court of the United States.

(4) ADMISSION ON CIRCUIT COURT PRACTICE. Any person admitted to practice as an attorney before any circuit court in this state prior to the twenty-fifth day of May, A. D. 1911, may, upon motion, be admitted to practice before the supreme court.

(5) NO SEX DISCRIMINATION. No person shall be denied admission or license to practice as an attorney in any court on account of sex.

(6) BAR COMMISSIONERS; APPOINTMENT; ELIGIBILITY OF APPLICANTS; EXAMINATION FEE; INVESTIGATION OF COMPLAINTS; COSTS CERTIFIED. The supreme court shall on or before the second Tuesday in August in the year 1903, appoint five competent resident attorneys, who shall constitute a board to be known as the "State Bar Commissioners." One of such persons shall be appointed for one year, one for two years, one for three years, one for four years and one for five years. The supreme court shall, on or before the second Tuesday in August in each year, after 1903, appoint one member of said board, who shall hold his office for five years. Three members of said board shall constitute a quorum. The supreme court shall, from time to time, make and adopt such rules and regulations relating to the qualifications of applicants for examination, the course of study to be pursued by such applicants and the standard of acquirements of such applicants to entitle them to admission to practice in the courts of this state, and such other rules and regulations relating to the examination of applicants for admission to the bar as such court may deem necessary or desirable. The period of study necessary to enable the applicant to take the examination shall be at least three years. A fee of ten dollars shall be paid to the said board by each applicant before taking any examination. The said board may adopt such rules, regulations and forms relating to holding and conducting its meetings and its procedure as it may deem necessary. Whenever the said board shall receive in any manner what to it appears to be reliable information to the effect that any attorney has violated any of the provisions of the oath for admission to the bar prescribed in section 256.29, or been guilty of misconduct which would justify the suspension or revocation of his license, it shall be the duty of such board to investigate the facts in reference thereto, and after such investigation, to file a complaint thereon when in its judgment the facts so warrant. The clerk of the supreme court shall be ex officio secretary of said board, but he shall not be a member thereof. Whenever said board shall, either directly or through the counsel hereinafter provided for, file with any circuit court commissioner of this state a written statement or declaration that it has received what to it appears to be reliable information to the effect that any attorney has been guilty of misconduct which would justify the suspension or revocation of his license, it shall be the duty of said circuit court commissioner to issue his subpoena for such persons as may be requested by said state bar commissioners or their counsel requiring them to appear before him at a time and place to be fixed in said subpoena, and proceedings may thereupon be had in respect thereto in the same manner as is provided in section 133.06, Wisconsin statutes, and all of the provisions of said statute in so far as the same may be applicable or adaptable to said proceeding shall apply thereto. Whenever said board shall, either directly or through such counsel so request, the clerk of the circuit court in any county shall issue a subpoena for such persons as may be requested, requiring them to appear before said board or before any member thereof at time and place to be fixed in such subpoena, and like proceedings may thereupon be had before said board or such member thereof. The fees of such court commissioner, clerk and witnesses shall be certified by the chief justice and paid in the manner hereinafter provided in subsection (14).

(7) LICENSE REVOCATION, SUSPENSION. The authority or license granted to any person to practice as an attorney in courts of record in this state may be suspended or revoked and annulled for the reasons now prescribed or authorized by law and by the practice of such courts, and also for the same reasons and in the manner prescribed in this section.

(8) COMPLAINT AGAINST ATTORNEY. Three or more residents of the state, one of whom shall be the district attorney of the county wherein the misconduct complained of occurred, or the board of state bar commissioners, may make written complaint against any person described in subsection (7). The complaint may be either positive, or on information and belief, and must be signed and verified by the oath or affirmation of those who make it. It must be entitled in the name of the state of Wisconsin against the defendant, and be addressed to the justices of the supreme court, contain the name and residence of the

defendant and state with clearness and certainty the facts constituting the alleged misconduct of the defendant. It shall be presented to a justice of the supreme court.

(9) ANSWER OR DEMUR. The supreme court shall by order require the defendant to appear and answer or demur to the complaint within twenty days after service upon him of the complaint and order, and to file his pleading or motion in the office of the clerk of the supreme court within ten days after the time limited to plead, and shall cause the complaint and order to be served by the sheriff of the county where the defendant resides, or by some other competent person, in the same manner as a summons, except that service by publication shall not be authorized. The original complaint and order, with proof of service, shall forthwith be filed in said clerk's office.

(10) ATTORNEY FOR COMMISSIONERS. The supreme court as occasion may require shall appoint a competent attorney who is a member of the bar of the supreme court to act as counsel for the state bar commissioners and to conduct investigations and prosecute disbarment proceedings. The district attorney of the county of the defendant's residence shall in his county render such assistance in investigations and preparation for trial as such counsel shall reasonably request.

(11) DEFENSE PROCEDURE. The defendant may move to strike out matter, make more certain, demur or answer, as in other cases, and may file an affidavit of prejudice as provided in the next subdivision.

(12) REFEREE; HEARING BEFORE, REPORT. Upon the filing of the defendant's answer the supreme court shall appoint a referee to hear the cause and to report his findings to the court, together with his recommendations as to the judgment to be made. The referee shall give to the defendant and counsel for the board of state bar commissioners at least twenty days' notice in writing of the time and place of trial. The proceeding shall be a civil action triable without a jury, governed by the rules and practice in equitable actions, except as different procedure is herein prescribed. At the commencement of the trial or during its progress the sittings may be changed as often as may be found convenient from one county to any other including that of the defendant's residence, upon the request of either party or on motion of the referee, if it shall appear that the convenience of the parties or witnesses or the speeding of the cause will be served thereby. All proceedings shall be carefully taken down by a stenographer to be appointed by the court, and the same together with all the testimony and evidence shall be transcribed in longhand or typewritten and certified and filed by him with other papers in the case.

(13) NOTICE TO DEFENDANT, ISSUE JOINED, TRIAL, JUDGMENT. Upon the filing of the report of the referee, including his findings of fact and recommendations as to the judgment to be entered, notice thereof shall be served on the defendant or such attorney as shall have appeared for him and on the counsel for the board of state bar commissioners, and such objections or motions as the defendant or such counsel shall see fit to make thereto shall be filed within twenty days thereafter. The court shall thereupon set the cause down to be heard not less than twenty days after the date of the filing of such objections and exceptions. By the judgment the court may adjudge as follows:

(a) Absolute revocation or annulment of defendant's license to practice before all courts of record of the state of Wisconsin.

(b) Temporary suspension of license on such conditions as to the court shall seem just, and with or without the payment of a fine and the costs of the proceeding in whole or in part.

(c) The judgment may contain such other provisions with or without the foregoing as may be authorized by law.

(14) COSTS AND FEES; TAXATION, HOW PAID. The supreme court shall tax the costs including the witnesses', reporter's, clerk's, sheriff's, referee's and other officers' fees. The amounts so taxed and allowed shall be certified by the chief justice to the director of budget and accounts, who shall thereupon draw his warrant on the state treasurer for the respective amounts allowed in favor of the parties named as entitled thereto. Such amounts shall be charged to the appropriation provided in section 20.62. If the judgment be against the defendant, all or a part of the costs may, in the discretion of the court, be charged to him, in which case they shall, together with any fine so adjudged, be collected by the district attorney of the county where defendant resides, and by him paid into the state treasury.

(15) SAME. The reasonable costs of disbarment proceedings conducted under the usual practice, other than that specially provided for in this section and the subdivisions thereof, shall be taxed, paid, adjudged and collected in the same manner as herein prescribed.

(16) OATH OF COMMISSIONERS' ATTORNEY. The counsel for the state bar commissioners and the referee herein provided for shall take and subscribe and file with the clerk of the

supreme court the usual and customary oath of office. [*1931 c. 366; 1933 c. 60; 1935 c. 378; Supreme Court Order, effective July 1, 1939; 1947 c. 6, 9*]

Note: Contracts between attorney and client are subject to closest scrutiny, and, if unfair, are set aside on principles governing conduct of trustees generally. An attorney has no right to enter into an extortionate contract with his client to sell stock for twelve hundred dollars and withhold six hundred dollars as compensation. State v. Barto, 202 W 329, 232 NW 553.

In disbarment proceedings, the public interest is the primary question. An attorney who twice offered money to a sheriff to obtain for his client a meat contract for the county jail was suspended for six months. State v. Kern, 203 W 178, 233 NW 629.

The evidence showed that the defendant was guilty of perjury in attempting to probate a spurious will and of fraud requiring disbarment. State v. Stetson, 203 W 657, 234 NW 704.

For a discussion of the respective jurisdictions and control of the legislature and the court over the admission of persons to practice law, see note to sec. 2, art. VII, Const., citing In re Cannon, 206 W 374, 240 NW 441.

In an original action in the supreme court for the disbarment of an attorney, who, among other instances of misconduct, received and converted to his own use more than two thousand dollars belonging to an insane woman, neither returning it nor accounting to the court for it, warrants the revocation of the license of the attorney to practice law. State v. Andrews, 206 W 615, 240 NW 147.

An unreversed judgment of conviction of an attorney for crime involving moral turpitude prima facie establishes his guilt and his unfitness to practice law, but is not conclusive in disbarment proceedings on any ground of res adjudicata. A motion for rereference was granted for the purpose of giving defendants opportunity to show, if they can, that the facts which formed the basis for their conviction of crime are not true. State v. O'Leary—State v. Sullivan, 207 W 297, 241 NW 621.

Where defendant, acting as executor and trustee of decedent's estate, had failed to close administration in six years and failed for twenty years to render an account, referee's finding that defendant had been grossly negligent and derelict in his duties was sustained. The defendant was suspended for two years and, as condition to application for reinstatement, required to pay costs of disbarment proceeding. State v. Ingram, 212 W 142, 248 NW 915.

This proceeding is for disbarment. The court reviews the evidence and orders that the defendant be suspended from the practice of law for a period of one year and specifies conditions upon which he may apply for reinstatement. State v. Kuenzli, 212 W 296, 249 NW 511.

The proceedings were in disbarment. The court reviews the evidence and directs the entry of judgment for permanent disbarment of the defendants. State v. Sullivan and O'Leary, 212 W 314, 249 NW 519.

Putting on probation an attorney guilty of gross neglect of business. State v. Soderberg, 215 W 571, 255 NW 906.

Facts found by referee warrant defendant's suspension from practice for two years on ground of breaches of duties to clients. State v. Bradford, 217 W 389, 259 NW 109.

The recommendations of the referee were adopted by the court. The defendant was disbarred for a period of two years, and thereafter until his license to practice law should be restored pursuant to specified conditions. State v. Rogers, 226 W 39, 275 NW 910.

Misleading a client by making him believe that services are being rendered when they are not is a violation of duty to the client and clearly calls for discipline. State v. Bonisz, 231 W 157, 285 NW 386.

On a charge of an attorney's overreaching a client and making excessive charges for services, the presumption is that unfairness or invalidity attaches to a contract for compensation executed by attorney and client after the establishment of the fiduciary relation, and the burden is on the attorney to show the reasonableness and fairness of such a transaction. State v. MacIntyre, 238 W 406, 298 NW 200.

Although a disbarment proceeding is a civil action triable without a jury, a count charging an attorney with suborning perjury and obstructing justice involves moral turpitude such that proof of the allegations must be by clear and satisfactory evidence. On a count of charging an attorney with unethical conduct in the preparation and use of false affidavits made by a client denying the keeping of two sets of pay-roll books to defraud the client's compensation insurer, the evidence warranted the referee's findings and recommendations of exoneration of the attorney on the ground that the charges were not supported, in that the attorney had no knowledge that the client had made false statements, and had a right to accept as true the information given to him by the client. On a count charging an attorney with abusing the processes of the courts and thereby taking advantage of numerous poor persons, the evidence warranted the referee's findings and recommendations of exoneration on the ground that unethical conduct was not shown. State v. Treis, 245 W 479, 15 NW (2d) 309.

256.29 Attorneys regulated. (1) ATTORNEY'S OATH. Each person admitted to practice as a member of the bar of any court of this state shall subscribe the roll of attorneys to be kept by the clerk and shall in open court take an oath or affirmation of the tenor following, to wit: I do solemnly swear:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God.

(2) UNPROFESSIONAL CONDUCT. It is hereby declared to be unprofessional conduct and grounds of disbarment for any attorney to violate any of the provisions of the oath prescribed by this section; or to stir up strife and litigation; or to hunt up causes of action and inform thereof, in order to be employed to bring suit, or to breed litigation by seeking out those having claims for personal injuries or other grounds of action in order to secure them as clients; or to employ agents or runners for like purposes or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases or business to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed in influencing the criminal, the sick, the injured, the ignorant or others to seek his professional services.

(3) VOID CONTRACT, LEGAL EFFECT. Any contract of employment obtained or made in violation of this section shall be absolutely void as to the attorney; but the client may recover any compensation paid thereunder to or for or received by the attorney on account of such employment. The attorney shall not be allowed to prosecute or defend the action or proceeding contemplated by such employment.

Note: While unanticipated situations may develop in the course of a trial because of which the interests of justice may demand that an attorney take the stand, that did not occur in this case; and it was improper for one of plaintiffs' attorneys, knowing in advance that he was a necessary and material witness, to participate in the trial as attorney. Interior W. Co. v. Buhler, 207 W 1, 238 NW 822.

A lawyer who drafted a will, being an important witness upon the issue of undue influence in a contest thereof, must have anticipated in advance of the trial that his presence as a witness would be required, and should have withdrawn from the conduct of the litigation, or his client should have foregone his testimony. Will of Cieszynski, 207 W 353, 241 NW 364.

It is court's duty to see that law profession is confined to professional service by professional means without seeking advantage for client by device or intrigue. Rodenfels v. Fidelity & D. Co., 211 W 536, 248 NW 442.

It was highly unethical for an attorney who had no financial responsibility to borrow $3,500 from a client on an unsecured note, such conduct on the part of the attorney amounting to an overreaching of a credulous client in the particular circumstances. State v. Maddock, 234 W 441, 291 NW 347.

Although an attorney is not ordinarily liable to third persons for his acts committed in the exercise of his proper functions as attorney concerning the subject matter of his agency, he is subject to the rule that an agent who wrongfully obtains money from a third person is not absolved from liability to such third person even though he may have paid the money over to his principal. Scandrett v. Greenhouse, 244 W 108, 11 NW (2d) 510.

256.30 Forfeiture for practicing without license. (1) Every person, who without having first obtained a license to practice law as an attorney of a court of record of Wisconsin, as provided by law, shall practice law within the meaning of subsection (2) of this section, or hold himself out as licensed to practice law as an attorney within the meaning of subsection (3) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, in addition to his liability to be punished as for a contempt.

(2) Every person who shall appear as agent, representative or attorney, for or on behalf of any other person, or any firm, copartnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who shall otherwise, in or out of court for compensation or pecuniary reward give professional legal advice not incidental to his usual or ordinary business, or render any legal service for any other person, or any firm, copartnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

(3) Every person who shall use the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his own name or any sign, advertisement, business card, letterhead, circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand such person to be authorized to practice law or who shall in any other manner represent himself either verbally or in writing, directly or indirectly, as authorized to practice law in this state, shall be deemed to be holding himself out as licensed to practice law as an attorney within the meaning of this section.

(4) No person shall practice law in this state under any other Christian or given name or any other surname than that under which he was originally admitted to the bar of this or any other state, in any instance in which the state bar commissioners shall, after a hearing, find that practicing under such changed name operates to unfairly compete with another practitioner or to mislead the public as to identity or to otherwise result in detriment to the profession or the public. Any person violating this subsection shall be subject to the penalty provided in subsection (1). This subsection does not apply to a change of name resulting from marriage or divorce. [*1931 c. 360; 1943 c. 372; 1945 c. 13*]

Note: Where farmers petitioned the court for relief under the Frazier-Lemke act after completion of foreclosure proceedings, appeared in court and believed it was merely for the purpose of setting a date for a future hearing, and the spokesman stated that he represented only himself and then on inquiry by the court as to whether he represented the other farmers similarly situated and present in court, as their agent, replied, without insolence or disrespect, that he would so represent the other farmers if they desired, and stated in response to other inquiries by the court that he was not licensed as an attorney and did not practice law, he was not guilty of contempt of court. Appeal of Cichon, 227 W 62, 278 NW 1.

Under (2) a layman may not engage in a business which involves the rendering of "legal service" and then claim immunity because the giving of professional legal advice was incidental to his usual or ordinary business. State ex rel. Junior Ass'n of Milwaukee Bar v. Rice, 236 W 38, 294 NW 550.

Abstractor who is also notary public renders legal service not incidental to his business by drafting deeds and mortgages. Isolated act of drafting legal instruments does not constitute practice of law. 22 Atty. Gen. 825.

Collection agency or officer thereof not licensed to practice law may not prosecute claims of customers in justice court, either as agent of creditor or as assignee of creditor's claim without consideration other than agreement to share in proceeds. Such activities constitute the practice of law under 256.30 (2), and one engaging in such business without being licensed to practice law may not claim immunity under 301.30 or otherwise. 34 Atty. Gen. 155.

Legislature may not by statute so define the practice of law or provide who may practice the same as to deprive the courts of their inherent powers over these subjects. 36 Atty. Gen. 134.

256.31 [*Renumbered section 256.30 sub. (3) by 1931 c. 360 s. 1*]

256.31 State bar of Wisconsin. (1) There shall be an association to be known as the "State Bar of Wisconsin" composed of persons licensed to practice law in this state, and membership in such association shall be a condition precedent to the right to practice law in Wisconsin.

(2) The supreme court by appropriate orders shall provide for the organization and government of the association and shall define the rights, obligations and conditions of membership therein, to the end that such association shall promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice. [*1943 c. 315*]

Note: The acting governor, as an attorney at law, has no interest sufficient to entitle him to maintain an action to enjoin the publication of an act of the legislature creating 256.31 of the statutes and authorizing the supreme court to provide by appropriate orders for the organization and government of a state bar association, of which all persons licensed to practice law in this state must be members, since he has sustained no injury from the unpublished act in his capacity as an attorney, and the act, even if published, will not affect any attorney unless and until the court has made an order pursuant to its provisions. The acting governor, as an elector or a taxpayer, has no interest sufficient to entitle him to maintain an action to enjoin the publication of the act in question, since he cannot in any possible way sustain an injury from such act in his capacity as an elector or taxpayer. Goodland v. Zimmerman, 243 W 459, 10 NW (2d) 180.

Ch. 315, laws of 1943, creating 256.31, directing the supreme court to provide by appropriate orders for the organization and government of a state bar association, and providing that all persons licensed to practice law shall be members as a condition precedent to the right to practice law in this state, is not unconstitutional as delegating legislative power to the court, nor as denying to members of the bar the equal protection of the laws guaranteed by the Fourteenth amendment, nor as denying to them the benefit of federal statutes relating to the practice of law in the federal courts. Integration of Bar Case, 244 W 8, 11 NW (2d) 604.

In accordance with valid rules and practice of the assembly governing pairs, particularly as to treating paired members as absent on the consideration of the question on which they are paired, and in accordance with the journal as approved by the assembly without change, beyond which the court cannot go in determining whether an act was validly enacted—the bill which became ch. 315, laws of 1943, was concurred in by the assembly over the veto of the governor by a vote of two-thirds of the members "present," as required by sec. 10, art. V, Const., and was validly enacted. Integration of Bar Case, 244 W 8, 11 NW (2d) 604.

In re Integration of Bar, 249 W 523, 25 NW (2d) 500.

256.32 Trial judge not to be counsel. No person shall be employed or allowed to appear as counsel or attorney before any court in any action which shall have been previously determined before him as a judge, justice, or examining magistrate.

256.33 Attorneys not to have office with judge; district attorney's partner not to be justice. No practicing attorney shall hold his office in the office of the clerk of any court in which he practices nor shall he hold his office in the same room with a circuit judge or with a county judge, unless such county judge shall be his law partner, and in such case he shall not be permitted to practice before such judge; nor shall the law partner of any district attorney act as a justice of the peace or as a court commissioner in any case in which the state may be a party, or defend in any court any person charged with any offense, or appear in any civil action against the state in which it is the duty of such district attorney to prosecute or appear for the state. Every attorney violating either of the provisions of this section shall forfeit not less than ten nor more than one hundred dollars.

256.34 Attorney not to be bail, etc. No attorney practicing in this state shall be taken as bail or security on any undertaking, bond or recognizance in any action or proceeding, civil or criminal, nor shall any practicing attorney become surety on any bond or recognizance for any sheriff, constable, clerk of court or justice of the peace.

256.35 Blank process to attorneys. The clerks of the courts of record may deliver to any attorney of their courts, in blank, any and all processes which may be requisite for

the prosecution of or carrying on any action or special proceeding in such courts, or the enforcement of any order or judgment therein. All processes, so delivered, shall be signed by the clerk officially and have the seal of the court impressed thereon and may be completed by the attorney, and shall have the same force as if the same were perfected by the clerk. [*Court Rule VI; Supreme Court Order, effective Jan. 1, 1934*]

256.36 Lien on proceeds of action to enforce cause of action. Any person having or claiming a right of action, sounding in tort or for unliquidated damages on contract, may contract with any attorney to prosecute the same and give such attorney a lien upon such cause of action and upon the proceeds or damages derived in any action brought for the enforcement of such cause of action, as security for his fees in the conduct of such litigation; when such agreement shall be made and notice thereof given to the opposite party or his attorney no settlement or adjustment of such action shall be valid as against the lien so created, provided that such agreement for fees shall be fair and reasonable, and this section shall not be construed as changing the law in respect to champertous contracts.

Note: A nonresident attorney properly taking part in the trial had the same right to an attorney's lien as a resident attorney would have. Liberty v. Liberty, 226 W 136, 276 NW 121.

The assignment of a judgment to an attorney as security for payment of his fees is not champerty. Ehrlich v. Frank Holton & Co., 228 W 676, 687, 280 NW 297.

256.37 When action settled by parties, what proof to enforce lien. If any such cause of action shall have been settled by the parties thereto after judgment has been procured without notice to the attorney claiming such lien, such lien may be enforced and it shall only be required to prove the facts of the agreement by which such lien was given, notice to the opposite party or his attorney and the rendition of the judgment, and if any such settlement of the cause of action is had or effected before judgment therein, then it shall only be necessary to enforce said lien to prove the agreement creating the same, notice to the opposite party or his attorney and the amount for which said case was settled, which shall be the basis for said lien and it shall at no time be necessary to prove up the original cause of action in order to enforce said lien and suit.

256.38 Consent of attorney in settlement of actions for personal injuries. No settlement or adjustment of any action which shall have been commenced to recover damages for any personal injury or for the death as a result of any personal injury in which an attorney shall have appeared for the person or persons having or claiming a right of action for such injury or death shall be valid, unless consented to in writing by such attorney or by an order of the court in which said action is brought approving of such settlement or adjustment.

Note: The misnomer of defendant in a first summons served in a personal injury action against him and others, where all the parties knew he was the person designated, is to be disregarded in determining the validity of his release from further liability after a settlement with the plaintiff without the consent of plaintiff's attorneys. A misnomer in a summons, naming an existing corporation unconnected with the controversy, instead of an individual, as a defendant, cannot be disregarded in determining the validity of the latter's release from further liability after a settlement with the plaintiff without the consent of the plaintiff's attorneys. Either party to a personal injury action may show a want of authority in the plaintiff's attorney to commence the action when the matter has been properly drawn in issue in the course of the trial, and neither party is confined to a motion to dismiss the action when a claim of settlement without the consent of the plaintiff's attorney is asserted under the statute. [Reinkey v. Wilkins, 172 W 515, distinguished.] Peplinsky v. Billings, 213 W 651, 252 NW 342.

256.39 Judges may direct calendars to be printed. The judges of the several courts of record having civil jurisdiction may, in their discretion, direct the respective clerks thereof to prepare printed calendars of the causes to be heard at the several terms, which shall be in the form and contain such matter as the judge may direct. The expense of the printing shall be paid out of the county treasury.

256.40 Law library. Any circuit judge may, whenever he shall deem it desirable, purchase or direct the clerk of the circuit court for any county in his circuit to purchase law books and subscribe for the periodical reports of any of the courts of the several states or territories or of the United States, for any county in his circuit, provided the cost of such books and reports shall not exceed $500 for any county in one year, unless the board of supervisors of such county shall authorize the expenditure of a larger sum. Whenever such purchase or subscription shall be made such clerk shall have each volume of books received stamped or branded with the name of his county and keep the same in his office for the use of the courts, judges, attorneys and officers thereof. Such clerk shall be responsible for their safekeeping and shall, at the expiration of his term, deliver them to his successor, take a receipt therefor and file it in the office of the county clerk. The cost of such volumes shall be paid by the county treasurer upon the presentation to him of the accounts therefor, certified to by the clerk of the circuit court and the circuit judge. [*1945 c. 191*]

256.41 Law library; Milwaukee county. The county board of any county containing two hundred fifty thousand or more population may acquire by gift, purchase or otherwise, a law library and law books, and shall house such law library and additions in the courthouse or in suitable quarters elsewhere, and shall have power to make, and enforce by suitable penalties, rules and regulations for the custody, care and preservation of the books and other property contained in said library. The county board of such county shall provide reasonable compensation for the law librarian and such assistants as shall be necessary for the proper care and maintenance of such library. Such librarian and assistants shall be appointed as the county board shall determine, pursuant and subject to sections 16.31 to 16.44. In such a county such librarian shall perform all of the duties imposed by section 256.40 upon the clerk of the circuit court and such clerk shall be free from all responsibility imposed by said section 256.40. The purchase of additional law books, legal publications, periodicals and works of reference for said library may be directed by each of the circuit judges of such county under section 256.40. The library shall be kept open every day throughout the year excepting Sundays and holidays, and for such hours as said board may direct. Attorneys and the general public shall be permitted to use the books in said library in the building housing said library under such rules and regulations as said board may adopt.

256.45 Attorneys, fee-splitting. Any attorney who shall claim, or demand, and collect or receive any money or other thing of value as compensation for his professional services in any action or special proceedings, and who shall promise or pay or deliver or cause to be paid or delivered any money or other consideration to or otherwise split his fees with any person not a practicing attorney as compensation for such person's aid, advice or assistance in having such action or special proceedings handled by such attorney or in being professionally retained, shall upon conviction, be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not to exceed six months. Such conviction shall operate as an annulment of the license held by the convicted person to practice as an attorney. All prosecutions under this section shall be in the circuit court.

256.46 Reporter not to take statements of injured persons. No phonographic reporter for any court of record in the state of Wisconsin or any of his assistants shall be employed by any person or corporation to take the statement of any injured or other person in any way relating to the manner in which the person was injured or killed or the extent of personal injuries, and any reporter or assistant violating the provisions hereof shall be removed and shall not be permitted to testify in any court concerning any such statement taken in violation hereof. The taking, transcribing or reporting testimony given by deposition or otherwise according to law, is not prohibited by this section. [*1945 c. 33*]

256.47 Taxes of this state enforced in other states. (1) The courts of this state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect of the liability for taxes lawfully imposed by the laws of this state, and the officials of such other state are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the secretary of state of such other state that such officials have the authority to collect the taxes sought to be collected by such action shall be conclusive proof of that authority.

(2) The attorney-general is empowered to bring action in the courts of other states to collect taxes legally due the state.

(3) The term "taxes" as herein employed shall include:

(a) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise.

(b) Any and all penalties lawfully imposed pursuant to a taxing statute.

(c) Interest charges lawfully added to the tax liability which constitutes the subject of the action. [*1947 c. 409*]