

CHAPTER 256.

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

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

(1) To issue process of subpoena, 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. So help me God.

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 s. 49.51 (1) [Stats. 1951].

(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.

History: 1951 c. 206.

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.

In its narrower and more usual sense, "contempt" is a despising of the authority, justice or dignity of the court. It is peculiarly the duty of an attorney to maintain the respect due to courts, and any breach of this duty is a contempt. *O'Brien v. State*, 261 W 570, 53 NW (2d) 534.

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.

Where proceedings in a divorce case were being held in the courtroom, with both parties represented by counsel and the defendant present in person and witnesses being examined concerning the divorce case, and the court, without any suspension or adjournment, made inquiry into alleged mistreatment of a witness who had testified at a previous hearing, the proceedings, including such inquiry, were proceedings before the court, and an attorney's contemptuous behavior toward the court during such inquiry was committed "during its sittings, in its immediate view and presence," so that the court had jurisdiction under 256.03 (1), 256.04, to adjudge a contempt and to punish such attorney summarily. The contemnor was not entitled to a trial under 256.07. *O'Brien v. State*, 261 W 570, 53 NW (2d) 534.

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.

The fact, that a trial was begun before a judge whose term expired prior to its conclusion, will not preclude his successor from trying the cause, but he must try it de novo. A judge who did not hear the evidence cannot render a valid judgment in a cause notwithstanding the testimony may have been written down and preserved; and he cannot make any finding of fact in a cause tried before his predecessor; but a successor judge may complete any acts uncompleted by his predecessor where they do not require the successor to compare and weigh testimony; and if the facts are stipulated or uncontroverted, the successor judge is entitled to base findings thereon. *Cram v. Bach*, 1 W (2d) 378, 83 NW (2d) 877.

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.

256.12 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.

256.14 and 252.155 will not be construed as depriving courts of their inherent power to take certain evidence in camera where the rights of parties, or witnesses, cannot otherwise be protected, since they would be unconstitutional if so construed, and since, further, sec. 9, art I, Const., provides that every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character. State ex rel. Ampeco Metal v. O'Neill, 273 W 530, 78 NW (2d) 921.

256.15 Holding court, effect of holidays. 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.

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.

Veterans must be granted a full day's of whether other employes are required to leave with pay on Memorial Day regardless work that day or not. 45 Atty. Gen. 140.

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 First Monday in September which shall be known as Labor Day, the fourth Thursday of November or the day appointed by the governor 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.

History: 1951 c. 247 s. 50.

256.175 Indian Rights Day. July 4 is designated as "Indian Rights Day," and in conjunction with the celebration of Independence Day, appropriate exercises or celebrations may be held in commemoration of the granting by congress of home rule and a bill of rights to the American Indians. When July 4 falls on Sunday, exercises or celebrations of Indian Rights Day may be held on either the third or the fifth.

History: 1957 c. 97.

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.

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; judge to disqualify himself for kinship. 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. Whenever the judge of any court is related within the third degree of kinship to any attorney or agent or his spouse appearing for one of the litigants in any matter, he shall disqualify himself from acting in such matter and a qualified judge shall be called in such manner as provided by statute upon the filing of an affidavit of prejudice.

History: Sup. Ct. Order, effective March 19, 1951; see Wisconsin Bar Bulletin, February 1951, page 19.

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 com-

pensation 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.

A client's application to the court to order a substitution of attorneys in an action, on proper terms, is a consent by the client to be bound by the court's determination, within the limits of judicial discretion and subject to appeal, and to pay such amount as the court may order to be paid to the replaced attorney. The client cannot thereafter, without the consent of such attorney, make this particular controversy moot by a settlement of the principal action or, for other unilateral reasons, abandon, to the attorney's prejudice, the client's effort to procure a substitution of attorneys, but the court may still proceed to a determination of the terms of substitution, and its

order, within the limits aforesaid, binds the client to compliance. *Froedtert G. & M. Co. v. Peter P. Woboril, Inc.* 265 W 456, 61 NW (2d) 855.

(3), relating to orders for the substitution of an attorney for a party to an action, recognizes that the court retains jurisdiction in such action to protect the former attorney in his lien or for his fees and disbursements, so that such party was not entitled to institute a separate and independent action to recover an alleged overpayment of fees to his former attorney, even though such action was instituted in the same court. *Touchett v. Sutherland*, 274 W 35, 79 NW (2d) 80.

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 herein-after provided in subsection (14). Counsel for the board shall be paid compensation as fixed by the court. Each member of the board shall be paid \$10 per day when actually and necessarily engaged in his duties and in addition his actual and necessary expenses.

(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, or a county bar association having as members more than 500 attorneys licensed to practice law in this state by its president in its name upon resolution of its governing body, after an investigation, may make written complaint against any person described in subsection (7), except that a county bar association may file a complaint only against an attorney practicing or residing in its county. 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.

(8a) SUPREME COURT TO ORDER SUBPOENAS. In order to aid the investigation required in sub. (8), the president of any county bar association therein described, after authority by resolution of its governing body, may file a verified petition with the supreme court of this state, the petition alleging that the bar association is conducting an investigation pursuant to sub. (8) and that the governing body of the bar association has, by resolution, authorized the president to request the issuance of subpoenas for various persons to be designated by the president. The supreme court shall thereupon enter an order directing any court commissioner of the state with whom a copy of the order may be filed to issue his subpoena for such persons as the president shall designate; and in the order the supreme court shall likewise appoint an attorney pursuant to sub. (10) to conduct the proceedings before such court commissioner. Upon the filing of a copy of the order with a court commissioner it shall be the duty of the court commissioner to issue his subpoenas for such persons as the president of the bar association may designate and shall require such persons to appear before such court commissioner at a time and place to be fixed in the subpoena. The persons subpoenaed shall be sworn and shall testify, and the testimony may be taken by a stenographic reporter, but need not be so taken, and if transcribed by a reporter shall be read to or by the witness and subscribed by him, unless the witness shall stipulate upon the record that the reading of the transcript of such testimony to or by the witness and his signature thereto are waived, and that the transcript may be used with like force and effect as if read and subscribed by him. The attendance of the witness under the subpoena may be compelled by any circuit court, and the attendance for the purpose of reading and subscribing the transcript may be compelled in the same manner that his attendance to be examined may be compelled. Upon conclusion of the proceedings which shall not be public, the record thereof shall be transmitted to the governing body of the local bar association. The commissioner shall be entitled to the fees provided in s. 252.17. All fees, costs and expenses incident to the inquiry shall be paid by the county bar association requesting the same.

(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 AND IN DISCIPLINARY ACTION. 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 or for the parties making the complaint, or for any party authorized by statute to investigate the conduct of any attorney, 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 PROCEDURES. 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 sub. (12).

(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 or the counsel appointed for the parties making the complaint at least 20 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 or for the parties making the complaint, and such objections or motions as the defendant or such counsel shall see fit to make thereto shall be filed within 20 days thereafter. The court shall thereupon set the cause down to be heard not less than 20 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 s. 20.780 (1). 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, 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 or for the parties making the complaint 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.

History: 1951 c. 319 s. 220a; 1953 c. 61; 1955 c. 145.

An attorney who failed to preserve inviolate the secrets of his client, and who drafted a will in accordance with his own wishes rather than those of his client, and exercised improper influence and gave erroneous advice and who prepared the will and attested to the testator's competency when he had grave doubts thereof and a belief that the testator had come under undue influence, and who signed the customary written form adopted in support of admission of the will to probate and then, on the trial contesting

the validity of the will, testified that at the time of its execution he did not think that the testator was competent and did believe that the testator was acting under undue influence, is disbarred as unqualified and unfit to continue as a member of the bar. *State v. Nowicki*, 256 W 279, 40 NW (2d) 377.

The test to be applied in a disbarment proceeding against an attorney on charges of unprofessional conduct toward a client is whether such attorney is so lacking in moral sense and appreciation of the relation of attorney and client that he should not be permitted in the public interest to continue in the practice of law. *State v. Markey*, 259 W 527, 49 NW (2d) 437.

An attorney may not at the threshold of an important lawsuit employ his influence to exact from his client a contract for an increased compensation, particularly where the circumstances are such as to suggest to the client that he may stand on the morrow without the help of counsel in his defense against a claim of some consequence. *State v. Markey*, 259 W 527, 49 NW (2d) 437.

The primary concern of the supreme court in a disbarment proceeding is whether the defendant's misconduct proves him unfit to be intrusted with the duties and responsibilities of an attorney in his relation to the public. In a disbarment proceeding against an attorney guilty of irregularities in handling certain estate funds, property and accounts, evidence as to defendant's loss of substantial fees because of disallowance thereof by the county court, as to the defendant's having been required

to pay \$13,000 in the settlement of claims which might not have been established if a proper accounting had been possible, as to the defendant's consequent financial impoverishment, as to the defendant's loss of practice and resignation from the public position, as to the publicity resulting from the defendant's misconduct, and as to the defendant's rehabilitation, warranted the referee's finding that the defendant had been sufficiently punished, and warranted the referee's recommendation that the defendant be reprimanded but not suspended or disbarred. *State v. Clarke*, 262 W 594, 55 NW (2d) 888.

Conduct of an attorney in respect to delay in filing his income-tax returns and paying his income taxes over a period of years was not justified, but it related to his own personal affairs and had no relation to his duties and obligations as a lawyer, and did not involve moral turpitude, and was not of such character as to require that he be disciplined as an attorney. *State v. McKinnon*, 263 W 413, 57 NW (2d) 404.

The supreme court may not treat the recommendation of a referee in a disbarment proceeding lightly. *State v. Alderman*, 270 W 516, 71 NW (2d) 268.

The plaintiff attorney had no private right of action against the defendant law firm for the restraint of alleged mere unprofessional practices or conduct, the remedy for a breach of professional ethics being that prescribed by (8). *Padway v. Goldberg*, 275 W 54, 80 NW (2d) 919.

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.

256.295 Barratry. (1) **SOLICITING LEGAL BUSINESS.** It shall be unlawful for any person to solicit legal matters or a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services.

(2) **SOLICITATION OF A RETAINER FOR AN ATTORNEY.** It shall be unlawful for any per-

son to communicate directly or indirectly with any attorney or person acting in his behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal matters or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

(3) **EMPLOYMENT BY ATTORNEY OF PERSON TO SOLICIT LEGAL MATTERS.** It shall be unlawful for an attorney to employ any person for the purpose of soliciting legal matters or the procurement through solicitation of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

(4) **PENALTY.** Any person guilty of any violation of this section shall be imprisoned not more than 6 months or fined not exceeding \$500.

History: 1955 c. 86; 1955 c. 296 s. 248.

256.30 Penalty 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 sub. (2) of this section, or hold himself out as licensed to practice law as an attorney within the meaning of sub. (3) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than \$50 nor more than \$500 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.

See note to 218.02, citing 44 Atty. Gen. 236.

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.

Integration of bar ordered. In re Integration of Bar, 273 W 281, 77 NW (2d) 602.

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.

256.325 Board of criminal court judges. The full-time judges of the courts of record of the state, having criminal jurisdiction, constitute the board of criminal court judges. The board shall meet at least twice each year at such time and place as it determines. The board shall elect a chairman, secretary and such other officers from its number as it deems necessary. Such officers shall perform such duties as the board prescribes. Each such judge, except a circuit judge, attending the meetings of the board shall on presenting his certificate of attendance to the county or municipal treasurer be reimbursed

for his travel and reasonable and necessary expenses out of the funds made available for his court.

History: 1951 c. 335; 1953 c. 539.

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.

256.335 Attorney not to have office with certain officers. No practicing attorney at law shall have his office or place of business in the same room with any clerk of the circuit court, district attorney, circuit, county, municipal or other judge, police justice or justice of the peace, unless he is a partner of such judge, district attorney, police justice or justice of the peace, in which case he shall not practice as an attorney before such judge, police justice or justice of the peace, court commissioner or attorney in any case in which it is the duty of such district attorney to appear or prosecute for the state; except that the law partner of any district attorney may, at the request of the district attorney, without fee or compensation therefor, assist the district attorney in the prosecution of any case on the part of the state; and any such attorney who shall violate the above provisions or any of them, and any such clerk, judge, district attorney, police justice or justice of the peace who shall knowingly permit any such violation shall be punished by fine not exceeding \$100.

History: 1955 c. 696 s. 190.

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.

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.

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.

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, including pocket parts and continuing services, shall not exceed \$1,000 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 take charge of the same for the use of the courts, judges, attorneys and officers thereof. 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.

History: 1953 c. 163.

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 Sharing of compensation by attorneys prohibited. It is unlawful for any person to divide with or receive from, or to agree to divide with or receive from, any attorney or group of attorneys, whether practicing in this state or elsewhere, either before or after action brought, any portion of any fee or compensation, charged or received by such attorney or any valuable consideration or reward, as an inducement for placing or in consideration of having placed, in the hands of such attorney, or in the hands of another person, a claim or demand of any kind for the purpose of collecting such claim, or bringing an action thereon, or of representing claimant in the pursuit of any civil remedy for the recovery thereof; but this section does not apply to an agreement between attorneys and counselors at law when associated in the conduct of legal matters to divide between themselves the compensation to be received. Any person violating this section shall be fined not to exceed \$500 or imprisoned not to exceed 6 months.

History: 1955 c. 49.

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.

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.

256.48 Guardian ad litem must be an attorney; fees. In all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state and shall be allowed reasonable compensation for his services, reasonable compensation to be such as is customarily charged by attorneys in this state for comparable services. Wherever the statutes do not specify who shall pay the fee of the guardian ad litem, the court shall order payment of his fees to be made by the party which the court determines should bear this cost.

History: 1953 c. 107; 1955 c. 165.

256.49 Compensation of attorneys appointed by court. Notwithstanding any other provision of the statutes, in all cases where the statutes fix a fee and provide for the payment of expenses of an attorney to be appointed by the court to perform certain designated duties, the court appointing the attorney shall, after the services of the attorney have been performed and the disbursements incurred, fix the amount of his compensation for the services and provide for the repayment of disbursements in such sum as the court shall deem proper, and which compensation shall be such as is customarily charged by attorneys in this state for comparable services.

History: 1957 c. 118.

See note to 247.13, citing 46 Atty. Gen. 163.

256.50 Age and other requirements for certain judges. Commencing July 1, 1956, no person shall take office as full-time judge of a court of record, municipal or inferior (other than a county court), unless he is an attorney of a court of record and is less than 70 years of age.

History: 1955 c. 486.

256.51 Certain municipal and inferior court judges under state retirement system; judges not to practice law. Commencing January 1, 1956, judges of the following courts shall not practice private law while serving a term as judge and shall devote their entire working time to duties of their judicial office: the superior courts of Dane and Douglas counties, the small claims courts of Dane and Kenosha counties, the municipal court for Brown county, the municipal court of Fond du Lac county, the municipal court of Kenosha county, the municipal court of Manitowoc county, the municipal court of Outagamie county, the municipal court of Racine county, the municipal court for Rock county, and the municipal court of the city of Oshkosh and county of Winnebago. These judges are the only municipal and inferior court judges (other than county judges) under the state retirement system.

History: 1955 c. 486.