CHAPTER 879

PROBATE — NOTICE, APPEARANCE, APPEAL AND MISCELLANEOUS PROCEDURE

879.01 Petitions to court. All applications to courts, except motions in matters at issue, shall be made by verified petition. All petitions must show the jurisdiction of the court and the interest of the petitioner. All petitions, except those for statutory certificates or for ex parte orders in proceedings already pending, shall also show the names and post-office addresses of all persons interested, so far as known to the petitioner or ascertainable by him or her with reasonable diligence; and shall indicate who are minors or otherwise under disability, and the names and post-office addresses of their guardians. No defect of form or substance in any petition may invalidate any proceedings.

History: 1977 c 449

879.03 Notice; court order. (1) How given. If notice of any proceeding in court or informal administration is required by law or deemed necessary by the court or the probate registrar under informal administration proceedings and the manner of giving notice is not directed by law, the court or the probate registrar shall order notice to be given under s. 879.05. The court or the probate registrar may order both service by publication and personal service on designated persons.

(2) Who entitled to notice. The following persons are entitled to notice:

(a) Each person interested unless represented by a guardian ad litem or guardian of the estate or unless represented by another person under the doctrine of virtual representation under s. 879.23 (5).

(b) Any guardian ad litem, guardian of the estate or attorney for a person in the military service that represents any person interested.

(c) The attorney general where a charitable trust, as defined in s. 701.01 (3), is involved, and in all cases mentioned in s. 852.01 (3).

(3) Domiciliary of a foreign country. If the petition for administration shows, or if it appears, that any person interested is a domiciliary of a foreign country and the address of the person is unknown, the court shall cause the notice of hearing of the petition or of any subsequent proceeding that may then be pending to be given the consul, vice consul or consular agent of the foreign country by mailing a copy of the notice in a sealed envelope, postage prepaid, addressed to the consul, vice consul or consular agent at his post-office address, at least 20 days before the hearing. If it is shown to the court that there is no consul, vice consul or consular agent of the foreign country, the court may direct that the notice be so mailed to the attorney general.

(4) When order does not specifically designate persons interested. If the order does not specifically designate the persons to whom notice is to be given, the order shall be deemed to refer to the persons set forth in the petition for the hearing or otherwise shown by the record as being persons interested and to the post-office addresses set forth or otherwise shown therein. The order and record shall be conclusive in all collateral actions and proceedings as to the names being the names of all

persons interested and as to the reasonable diligence of the personal representative in determining the post-office addresses.

(5) UNKNOWN PERSONS OR ADDRESSES. Where the post-office address of a person interested is not known or reasonably ascertainable, or the names of persons interested are unknown, the notice shall so state and such statement shall be included in the publication thereof.

History: 1973 c 90, 233, 336; 1975 c 198 s 65; 1975 c 421; 1977 c 73, 449.

Cross References: See 856.11 which requires notice to both an interested person and his guardian ad litem or guardian of the estate when giving notice of hearing on petition for administration.

See 851.21 which defines "persons interested"

879.05 Notice; manner of giving. (1) GENERALLY. Unless the statute requiring notice in a particular proceeding provides otherwise, notice required in the administration of an estate or other proceeding shall be given either by mail under sub. (2) or by personal service under sub. (3). The first notice given by mail in any administration or other proceeding must be accompanied by notice by publication given under sub. (4). Notice by publication in addition to mailed notice is required for subsequent hearings if the name or the post-office address of one or more persons entitled to notice has not been ascertained.

(2) SERVICE BY MAIL. Service shall be made by first class mail either within or without the state at least 20 days before the hearing or proceeding upon any person whose post-office address is known or can with reasonable diligence be ascertained.

(3) PERSONAL SERVICE. Personal service shall be made at least 10 days before the hearing under s. 801.11, except as that section provides for service by publication and except that substituted service under s. 801.11 (1) (b) may not be made outside this state.

(4) SERVICE BY PUBLICATION. Unless a statute provides otherwise, every court notice required to be given by publication shall be published as a class 3 notice in a newspaper published in the county, eligible under ch. 985, as the court by order directs.

History: 1973 c 12; Sup. Ct. Order, 67 W (2d) 783; 1977 c. 449.

Under facts of case, published notice of hearing on proof of will was legal notice to heirs under 856.11. In re Estate of Phillips, 92 W (2d) 354, 284 NW (2d) 908 (1979).

879.07 Proof of service of notice. (1) MAIL. Proof of service by mail shall be by the affidavit of the person who mailed the notice showing when and to whom he mailed it and how it was addressed.

(2) PERSONAL SERVICE. Proof of personal service shall be made under s. 801.10 or by the written admission of service by the person served if competent and an adult, and the subscription of the person's name to the admission is presumptive evidence of its genuineness.

(3) PUBLICATION. Proof of service by publication shall be by affidavit under s. 985.12.

History: Sup. Ct. Order, 67 W (2d) 783; 1975 c. 218.

879.09 Notice requirement satisfied by waiver of notice. Persons who are not minors or incompetent, on behalf of themselves, and appointed guardians ad litem and guardians of the estate on behalf of themselves and those whom they represent, may in writing waive the service of notice upon them and consent to the hearing of any matter without notice except that guardians ad litem cannot waive the notice of a hearing to prove a will or for administration on behalf of those whom they represent. An attorney for a person in the military service may waive notice on behalf of himself but cannot waive notice on behalf of anyone whom he represents. Waiver of notice by any person is equivalent to timely service of notice.

879.11 Notice requirement satisfied by appearance. An appearance by a person who is not a minor or incompetent is equivalent to timely service of notice upon him. An appearance by a guardian of the estate is equivalent to timely service of notice upon him and upon his ward. An appearance by a guardian ad litem is equivalent to timely service of notice upon him and except at a hearing to prove a will or for administration is equivalent to timely service of notice upon those whom he represents. An appearance by an attorney for a person in the military service is equivalent to timely service of notice upon him but does not satisfy a requirement for notice to anyone whom he represents.

879.13 Delayed service of notice. If for any reason notice to any person, including a minor or incompetent, is insufficient, the court may at any time order service of notice together with documents required under ss. 858.03 and 862.09 and, where required, appoint a guardian ad litem under s. 879.23 and require the person or his guardian ad litem to show cause why he should not be bound by the action already taken in the proceedings as though he had been timely served with notice. Such person may consent in writing to be bound.

History: Sup. Ct. Order, 50 W (2d) vii.

Comment of Judicial Council, 1971: This amendment makes it clear that these provisions apply to minors and incompetents. The cross reference change is corrective. [Re Order effective July 1, 1971]

879.15 Appearances, how made. In any proceeding in the court, appearances shall be made as follows:

(1) A minor or incompetent person shall appear by a guardian ad litem or by the guardian of his or her estate, who may appear by attorney, or by another person under the doctrine of virtual representation as provided in s. 879.23 (5);

(2) A personal representative shall appear by attorney; and

(3) Every other person shall appear either in person or by attorney.

History: 1973 c. 233; 1975 c. 198 s. 65; 1975 c. 421; 1977 c. 449.

Cross Reference: See 879.23 for provision authorizing appointment of surviving parent as guardian ad litem.

879.17 Attorney, appearance by. The attorney who first appears for any party or person interested shall be recognized as the attorney throughout the matter or proceeding unless another attorney is substituted under s. 757.27 (3).

History: 1977 c. 187 s. 135; 1977 c. 273; Sup. Ct. Order, eff. 1-1-80.

NOTE: The Supreme Court Order dated December 11, 1979, effective January 1, 1980, states that a reference to "SCR 11.02 (3)" is equivalent to the reference to "s. 757.27 (3)".

The "cause" for substituting an attorney under this section need not be as stringent as under 856.31. An executor who asks for substitution when probate has just been begun because the heirs desire it and to avoid conflict with them has shown sufficient cause. Estate of Ainsworth, 52 W (2d) 152, 187 NW (2d) 828, 189 NW (2d) 505.

879.19 Attorney, notice to. When a person interested who is not a minor or incompetent has retained an attorney to represent him and the attorney has mailed a notice of retainer and request for service to the attorney for the personal representative and filed a copy with the court, any notice which would be given to the person interested shall instead be given to the attorney, the attorney may waive notice for the person interested under s. 879.09.

879.21 Appearance for person domiciled in foreign country. When notice has been given to the attorney general under s. 879.03 (3) that a person domiciled in a foreign country, not represented by a consul, vice consul or consular agent, is interested in an estate, the attorney general shall appear for the person and be allowed his compensation and necessary expenditures in the same manner as a guardian ad litem.

History: 1973 c. 90.

879.23 Guardian ad litem. (1) VIRTUAL REPRESENTATION. A guardian ad litem shall be appointed for any person interested who is a minor or incompetent and has no guardian of his estate, or where the guardian of his estate fails to appear on his behalf or where the interest of the minor or incompetent is adverse to that of the guardian of his estate. A guardian ad litem may be appointed for persons not in being or presently unascertainable. A guardian ad litem shall not be appointed or appear in the same matter for different persons whose interest are conflicting.

(2) TIME OF APPOINTMENT. The court may appoint the guardian ad litem at the time of making the order for hearing the matter, and require notice of the appointment and of the hearing to be served upon the guardian ad litem; or the guardian ad litem may be appointed on the day of the hearing and before any proceedings are had.

(3) DURATION OF APPOINTMENT. The guardian ad litem shall continue to act throughout the proceeding in relation to the same estate or matter until proper distribution has been made to or for the benefit of the person he represents, unless earlier discharged by the court. A guardian ad litem shall be discharged by the court when it appears that the minority or incompetency has terminated or when it appears that the person he represents no longer has an interest in the estate or matter. If a will creates a trust, a guardian ad litem appointed in the administration of the estate has no responsibility in regard to the administration of the testamentary trust unless reappointed for that purpose.

(4) WHO MAY SERVE. (a) Except as provided in par. (b) or (c), the guardian ad litem appointed under this section shall be either an attorney admitted to practice in this state or a parent or child of the minor or incompetent to be represented by the guardian ad litem. A parent or child of the person to be represented may be appointed the guardian ad litem under this section only if the court finds either that the prospective guardian ad litem is an attorney admitted to practice in this state or is otherwise suitably qualified to perform the functions of the guardian ad litem.

(b) In matters relating to the probate of an estate in which a minor has an interest that is unlikely to exceed $1,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If no parent of the minor is qualified and willing to serve as guardian ad litem, the guardian ad litem shall be an attorney as provided in par. (a).

(c) In matters relating to the probate of an estate in which an incompetent has an interest that is unlikely to exceed $1,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If the court finds that no surviving parent is qualified and willing to serve, the guardian ad

litem shall be an adult child of the incompetent, unless the court finds that no adult child of the incompetent is qualified and willing to serve as the guardian ad litem. If the court finds that neither a parent nor an adult child of the incompetent is qualified and willing to serve as the guardian ad litem, the court shall appoint an attorney as provided in par. (a).

(d) The guardian ad litem may be allowed reasonable compensation and may be allowed reimbursement for necessary disbursements, the amount of which shall be set by the court and paid out of the estate.

(5) VIRTUAL REPRESENTATION. The court may dispense with or terminate the appointment of a guardian ad litem for an interested person who is a minor, incompetent, not in being or presently unascertainable, if there is a living person, of full legal rights and capacity, who is a party to the proceeding and has a substantially identical interest in it.

History: Sup. Ct. Order, 50 W (2d) vii; 1973 c. 233; 1977 c. 299; 1979 c. 110 s. 60 (2)

Cross Reference: See 757.48 for general provisions on guardian ad litem.

879.25 Attorney for person in military service. At the time of filing a petition for administration of an estate, an affidavit shall be filed setting forth facts showing whether or not any of the persons interested in the matter are actively engaged in the military service of the United States. Whenever it appears by the affidavit or otherwise that any person in the active military service of the United States is interested in any administration and is not represented by an attorney, the judge shall appoint an attorney to represent the person and protect his interest and no further proceedings shall be had until such appointment has been made. The attorney for a person in the military service shall be an attorney admitted to practice in this state and shall be allowed compensation and necessary expenditures to be fixed by the court and paid out of the estate.

History: 1973 c. 233

879.26 Waiver of right to certain documents. Any person who is not a minor or incompetent may in writing waive his right to be given (1) a statement that the inventory has been filed under s. 858.03, and (2) a copy of accounts under s. 862.11.

History: 1971 c. 211 s. 126.

879.27 Appeals. (1) APPEAL IS TO THE COURT OF APPEALS. Any person aggrieved by any appealable order or judgment of the court assigned to exercise probate jurisdiction may appeal or take a writ of error therefrom to the court of appeals.

(2) EFFECT OF CHS. 801 TO 847. In all matters not otherwise provided for in this chapter relating to appeals from courts assigned to exercise probate jurisdiction to the court of appeals, the law and rules of practice of chs. 801 to 847 govern.

(3) TIME LIMIT. Except as provided in s. 879.31, the time within which a writ of error may be issued or an appeal taken to obtain a review by the court of appeals of any appealable order or judgment of the court assigned to exercise probate jurisdiction is limited to 60 days from the date of entry thereof.

(4) WHO MAY APPEAL ON BEHALF OF MINOR OR INCOMPETENT. In all cases the appeal on behalf of any minor or incompetent person may be taken and prosecuted by the guardian of his estate or by a guardian ad litem.

(5) LIMITATION ON BOND AND COSTS. On appeals from courts assigned to exercise probate jurisdiction to the court of appeals no bond may be required of, or costs awarded against, any alleged incompetent or person acting in behalf of an alleged incompetent on an appeal from an adjudication of incompetency, and no bond may be required of any personal representative, guardian or trustee of a testamentary trust.

History: Sup. Ct. Order, 67 W (2d) 783; 1977 c. 187, 449; 1979 c. 89.

A memorandum decision in a probate proceeding for construction of a will from which appeal was taken is treated as an order terminating the proceeding and therefore appealable although no separate order was entered, where it appeared that the memorandum decision was clearly intended to be a final ruling. Estate of Boerner, 46 W (2d) 183, 174 NW (2d) 457

879.31 Extension of time for appeal; retrial. If any person aggrieved by any act of the court does not appeal within the time allowed without fault on the person's part, the court may, upon his or her petition, notice to the adverse party, and hearing, and upon terms and within the time the court deems reasonable, but not later than 6 months after the act complained of, by order allow an appeal, if justice appears to require it, with the same effect as though done seasonably; or the court may reopen the case and grant a retrial.

History: 1977 c. 449

Appeal by the estate representative from an adverse decision was timely although not made within the 60-day statutory limit, the record revealing that time to appeal was extended by the trial court based on its finding that the omission was the result of the negligence of counsel. Estate of Mihelcic, 63 W (2d) 33, 216 NW (2d) 245.

879.33 Costs, if allowed; judgment for. Costs may be allowed in all appealable contested matters in court to the prevailing party, to be paid by the losing party or out of the estate as justice may require; and if costs are allowed they shall be taxed by the register in probate after the notice required in ch. 814. If costs are allowed,

the court shall render judgment therefor, stating in whose favor and against whom rendered and the amount, and a list of the items making the amount shall be filed with the papers in the case. Costs shall not be taxed against a guardian ad litem, except as provided in s. 814.14.

History: Sup. Ct. Order, 50 W (2d) vii; Sup. Ct. Order, 67 W (2d) 783; 1977 c. 449.

Comment of Judicial Council, 1971: Generally, costs shall not be taxed against a guardian ad litem. [Re Order effective July 1, 1971]

879.35 Costs in will contests. Costs may be awarded out of the estate to an unsuccessful proponent of a will if he is named as an executor therein and propounded the document in good faith, and to the unsuccessful contestant of a will if he is named as an executor in another document propounded by him in good faith as the last will of the decedent.

A finding of undue influence on the part of the unsuccessful proponent disqualifies it from asserting "good faith" under the statute. In re Estate of Christen, 72 W (2d) 8, 239 NW (2d) 528.

879.37 Attorney fees in contests. Reasonable attorney fees may be awarded out of the estate to the prevailing party in all appealable contested matters, to an unsuccessful proponent of a will if he is named as an executor therein and propounded the document in good faith, and to the unsuccessful contestant of a will if he is named as an executor in another document propounded by him in good faith as the last will of the decedent.

See note to 879.35, citing In re Estate of Christen, 72 W (2d) 8, 239 NW (2d) 528.

879.39 Security and judgment for costs. In all cases under s. 879.33 the court may require the claimant or contestant to give a bond in such sum and with such surety as is approved by the court, to the effect that he or she will pay all costs that may be awarded by the court in the proceeding against him or her. A judgment for costs shall be against the claimant or contestant and the surety.

History: 1977 c. 449.

879.41 Fees in court. Fees in court shall be allowed:

(1) To appraisers, an amount to be fixed by the court;

(2) To jurors, the fees under s. 756.25;

(3) To witnesses and interpreters, the fees under s. 885.05, and to expert witnesses, the fees under s. 814.04 (2);

(4) Travel as fixed by the court;

(5) In cases not provided for, a fair compensation shall be allowed by the court.

History: Sup. Ct. Order, 67 W (2d) 783; 1977 c. 187 s. 135; 1977 c. 449.

879.43 Money judgment in favor of estate. (1) ENFORCEMENT. All money judgments in court in favor of an estate may be enforced through the court, after costs have been taxed under s. 814.10. The pertinent provisions of ch. 815, relating to executions, apply.

(2) STAY OF EXECUTION. Execution of judgments may be stayed under chs. 801 to 847.

(3) DOCKET. Judgments may be docketed in the office of the clerk of circuit court, upon the filing of a certified transcript of the judgment.

(4) LIEN. A judgment when docketed is a lien upon the real estate of the debtor under s. 806.15.

History: Sup. Ct. Order, 67 W (2d) 784; 1977 c. 449; 1979 c. 89.

879.45 Jury trials, practice. (1) GENERALLY. Jury trials may be had in court in all cases in which a jury trial may be had of similar issues under s. 805.01 (1).

(2) DEMAND. In all cases under sub. (1), any person having the right of appeal from the determination of the court may file with the court, within 10 days after notice that the matter is to be contested, a written demand for a jury trial.

(3) FRAMING ISSUES; TRANSFER. Upon filing the demand and receipt, the court may order an issue to be framed by the parties within a fixed time, and the matter shall be placed upon the calendar.

(4) COSTS. In all jury cases costs shall be allowed as a matter of course to the prevailing party.

(5) SELECTION OF JURORS. Jurors and trial juries shall be drawn under ss. 756.04 to 756.096 and trials by jury shall be under ss. 756.04 to 756.096 and ch. 805.

(6) CALENDAR. At the request of the court, the clerk shall prepare, in the order of their date of issue, a list of cases in which a trial by jury has been demanded. The list shall constitute a jury calendar. In case a continuance in any action upon the jury calendar is asked by any party, the court may grant the continuance and require payment of $10 motion fees.

(7) PRETRIAL CONFERENCE. The court may hold a pretrial conference under s. 802.11.

(9) TRANSFER TO CIRCUIT COURT. Any party to the controversy may within 10 days after notice that a jury trial has been demanded, have the matter transferred to the circuit court of the county for trial. Upon the filing of demand for transfer, the judge of the probate court shall immediately cause the record and proceedings in the matter to be certified to the circuit court, and it shall then be tried and determined as a circuit court action. If the matter is one where

the probate court has the right to fix the fees or compensation of the attorneys, personal representatives or guardians, the circuit court may determine the fees or compensation. The circuit court may render judgment as is proper, or make an order therein as the probate court ought to have made and may remit the case to the probate court for further proceedings, or make any order or take any action therein to enforce its own judgment as the circuit court deems best. The probate court, after the cause is remitted, shall proceed therein in accordance with the determination of the circuit court.

History: Sup. Ct. Order, 67 W (2d) 784; 1977 c. 418 s. 929 (8m); 1977 c. 447 s. 210; 1977 c. 449; 1979 c. 32.

879.47 Papers, preparation and filing. The attorney for any person desiring to file any paper in court is responsible for the preparation of the paper. All papers shall be legibly written on substantial paper and shall state the title of the proceeding in which they are filed and the character of the paper. Uniform forms shall be used if suitable and available. If papers are not so written or if uniform forms are not used when suitable and available, the court may refuse to receive and file them. The court shall show on all papers the date of their filing.

History: 1977 c. 449.

Cross Reference: See 758.17 which provides for adoption of uniform forms.

879.49 Papers, withdrawal. No paper filed in any matter may be withdrawn without leave of the court or the judge, and when a paper is withdrawn a copy thereof, attested by the judge or register in probate, shall, if required, be left in its place.

879.51 Court not to delay in setting matter for hearing. When a petition and proposed order for hearing are filed, the court within 10 days thereafter shall set a time for hearing.

879.53 Hearings set for a day certain. All matters in court requiring notice of hearing shall be set for hearing on a day certain, and shall be heard on the day set or as soon thereafter as counsel may be heard.

History: 1977 c. 449.

879.55 Correction of clerical errors in court records. Upon verified petition to a court by any person interested or his or her successor in title praying that clerical errors in its records be corrected as specified in the petition, the court shall order a hearing thereon. The hearing shall be held without notice or upon such notice as the court requires. If the court requires notice, it shall be given to those persons interested who will be affected by the change in the records. If on hearing the court finds its record incorrect as a result of clerical error, it shall make its record conform to the truth. The corrected record shall be as valid and binding as though correctly made and entered at the proper time.

History: 1977 c. 449.

879.57 Special administrator; personal representative, guardian. If it is found by the court to be necessary to appoint a personal representative or guardian and there appears to be no person in the state to petition for the appointment or there appears to be no suitable person to be so appointed, the court shall, upon its own motion or upon the petition of any interested party, grant administration of an estate of a decedent or guardianship of the estate of a minor or incompetent person to the interested party or a special administrator, and he or she shall thereupon take possession of the estate and protect and preserve it, and proceed with the administration and with the care and management of the estate. The authority of a special administrator in the administration or guardianship may be revoked at any time upon the appointment and qualification of a personal representative or guardian, or when for any other cause the court deems it just or expedient. Revocation of authority does not invalidate the special administrator's acts performed prior to revocation and does not impair the special administrator's rights to receive from the estate his or her legal charges and disbursements, to be determined by the court.

History: 1973 c. 90; 1977 c. 449.

Cross Reference: For duty of special administrator as to inheritance taxes, see 72.31.

879.59 Compromises. (1) BETWEEN CLAIMANTS; PARTIES. The court may authorize personal representatives and trustees to adjust by compromise any controversy that may arise between different claimants to the estate or property in their hands to which agreement the personal representatives or trustees and all other parties in being who claim an interest in the estate and whose interests are affected by the proposed compromise shall be parties in person or by guardian as hereinafter provided.

(2) BETWEEN TESTATE AND INTESTATE DISTRIBUTEES; PARTIES. The court also may authorize the person named as executor in one or more instruments purporting to be the last will and testament of a person deceased, or the petitioners for administration with the will or wills annexed, to adjust by compromise any controversy that may arise between the persons claiming as devisees or legatees under the will or wills and the persons entitled to or claiming the estate

of the deceased under the statutes regulating the descent and distribution of intestate estates, to which agreement or compromise the persons named as executors or the petitioners for administration with will annexed, those claiming as devisees or legatees and those claiming the estate as intestate shall be parties, provided that persons named as executors in any instrument who have renounced or shall renounce such executorship and any person whose interest in the estate is unaffected by the proposed compromise shall not be required to be parties to the compromise.

(3) PARTIES SUBJECT TO GUARDIANSHIP. Where a person subject to guardianship is a necessary party to a compromise under this section he shall be represented in the proceedings by his guardian or by a special guardian appointed by the court, who shall in the name and on behalf of the party he represents make all proper instruments necessary to carry into effect any compromise sanctioned by the court.

(4) PERSONS UNKNOWN OR NOT IN BEING. If it appears to the satisfaction of the court that the interests of persons unknown or the future contingent interests of persons not in being are or may be affected by the compromise, the court shall appoint some suitable person to represent those interests in the compromise and to make all proper instruments necessary to carry into effect any compromise sanctioned by the court. If by the terms of any compromise made under this section money or property is directed to be set apart or held for the benefit of or to represent the interest of persons subject to guardianship or persons unknown or unborn, the same may be deposited in any trust company, or any state or national bank within this state, authorized to exercise trust powers, or with a special administrator, and shall remain subject to the order of the court.

(5) COURT APPROVAL REQUIRED. An agreement of compromise made in writing under this section, if found by the court to be just and reasonable in its effects upon the interests in the estate or property of persons subject to guardianship, unknown persons, or the future contingent interests of persons not in being, is valid and binding upon such interests as well as upon the interests of adult persons of sound mind.

(6) PROCEDURE. An application for the approval of a compromise under this section shall be made by verified petition, which shall set forth the provisions of any instrument or documents by virtue of which any claim is made to the property or estate in controversy and all facts relating to the claims of the various parties to the controversy and the possible contingent interests of persons not in being and all facts which make it proper or necessary that the proposed compromise be approved by the court. The court may entertain an application prior to the execution of the proposed compromise by all the parties required to execute it and may permit the execution by the necessary parties to be completed after the inception of the proceedings for approval thereof if the proposed compromise has been approved by the estate representatives described in subs. (1) and (2). The court shall inquire into the circumstances and make such order or decree as justice requires.

History: 1973 c. 90.

Cross Reference: See 859.31 which provides for compromise of creditor's claims against the estate.

An alleged agreement of compromise will not be enforced where items are disputed and it is not agreed to in writing. Estate of McKillip, 53 W (2d) 202, 191 NW (2d) 856.

This section cannot be construed to require that all rights under a will be established and all claims be adjudicated before a compromise of claims is allowed, for that interpretation would not only narrow the area of controversy, eliminate the incentive to compromise, and destroy the purpose thereof (to avoid the costs and risks of litigation), but ignore explicit statutory provisions recognizing the right of executors to compromise controversies involving "persons claiming as devisees or legatees" and "persons entitled to or claiming the estate of the deceased" as heirs at law. Estate of Trojan, 53 W (2d) 293, 193 NW (2d) 8.

A guardian ad litem can execute a compromise agreement of his ward's claim in a will contest case where there was no general guardian. Estate of Trojan, 53 W (2d) 293, 193 NW (2d) 8.

879.61 Discovery proceedings. Any personal representative or any person interested who suspects that any other person has concealed, stolen, conveyed or disposed of property of the estate; or is indebted to the decedent; possesses, controls or has knowledge of concealed property of the decedent; possesses, controls or has knowledge of writings which contain evidence of or tend to disclose the right, title, interest or claim of the decedent to any property; or possesses, controls or has knowledge of any will of the decedent, may file a petition in the court so stating. The court upon such notice as it directs, may order the other person to appear before the court or a court commissioner for disclosure, may subpoena witnesses and compel the production of evidence and may make any order in relation to the matter as is just and proper.

History: 1977 c. 449.

879.63 Action by person interested to secure property for estate. Whenever there is reason to believe that the estate of a decedent as set forth in the inventory does not include property which should be included in the estate, and the personal representative has failed to secure the property or to bring an action to secure the property, any person interested may, on behalf of the estate, bring an action in the court in which the estate is being administered to reach the property and make it a part of the estate. If

the action is successful, the person interested shall be reimbursed from the estate for the reasonable expenses and attorney's fee incurred by him in the action as approved by the court but not in excess of the value of the property secured for the estate.

Bringing an action under this section is not the exclusive remedy of a party challenging an omission from an inventory. In Matter of Estate of Ruediger, 83 W (2d) 109, 264 NW (2d) 604 (1978).

879.65 Annuity table. The present value of any estate, annuity or interest of beneficiary may be computed on the basis of the American experience table of mortality with Craig's extension below age 10, and interest at 5% per year. The Northampton table of mortality and interest at the aforesaid rate may be used where it is impracticable to use the aforesaid basis. Any court or judge by whom any present value is to be determined may transmit to the commissioner of insurance a statement of the facts he requires, and the commissioner shall make the necessary computation and certify it without charge. The present value of an immediate annuity of $1, on the above basis for a single life is as follows:

AMERICAN EXPERIENCE
5% SINGLE LIFE

AGE	PRESENT VALUE
10	16.505
11	16.461
12	16.415
13	16.366
14	16.316
15	16.263
16	16.207
17	16.149
18	16.088
19	16.024
20	15.957
21	15.886
22	15.813
23	15.736
24	15.655
25	15.570
26	15.482
27	15.389
28	15.292
29	15.191
30	15.084
31	14.973
32	14.857
33	14.735
34	14.608
35	14.475
36	14.336
37	14.191
38	14.039
39	13.881
40	13.716
41	13.544
42	13.365
43	13.179
44	12.985
45	12.783
46	12.574
47	12.357
48	12.133
49	11.901
50	11.662
51	11.416
52	11.164
53	10.905
54	10.640
55	10.370
56	10.095
57	9.8145
58	9.5299
59	9.2413
60	8.9493
61	8.6545
62	8.3574
63	8.0588
64	7.7590
65	7.4588
66	7.1592
67	6.8607
68	6.5642
69	6.2705
70	5.9802
71	5.6942
72	5.4129
73	5.1359
74	4.8628
75	4.5926
76	4.3248
77	4.0586
78	3.7939
79	3.5311
80	3.2702
81	3.0135
82	2.7606
83	2.5105
84	2.2607
85	2.0098
86	1.7606
87	1.5175
88	1.2861
89	1.0670
90	0.85453
91	0.64497
92	0.44851
93	0.28761
94	0.13605

Note: Rule for calculating the present value of a life estate: "Present value" at the head of the above table means that the numbers below that head give the present value of a life annuity of one dollar. Calculate the interest at five per cent for one year upon the sum to the income of which the person is entitled. Multiply this interest by the present value set opposite

the person's age in the above table, and the product will be the present value of the life estate of such person in said sum

The Wisconsin Department of Revenue has provided us with Craig's Extension as follows:

BELOW AGE 1	12.818
AGE 1	14.922
AGE 2	15.731
AGE 3	16.125
AGE 4	16.346
AGE 5	16.472
AGE 6	16.535
AGE 7	16.561
AGE 8	16.560
AGE 9	16.540

History: 1979 c. 110 s. 60 (13).

Use of mortality table from American Jurisprudence Desk Book approved. Tills v. Elmbrook Memorial Hospital, 48 W (2d) 665, 180 NW (2d) 699

879.67 Out-of-state service on personal representative. If it is necessary to serve upon a personal representative any order, notice or process of the court, and service cannot be made in this state, service may be made under s. 801.11 (1) for the service of summons.

History: Sup. Ct. Order, 67 W (2d) 784; 1977 c. 449

879.69 Court must rule on petition. When the personal representative petitions for a ruling or order in regard to any matter connected with the administration of the estate, the court, after hearing on notice under s. 879.03 shall make a ruling or grant or deny the petition by order.