

CHAPTER 814

COURT COSTS AND FEES

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SUBCHAPTER I

COSTS IN CIVIL ACTIONS AND SPECIAL PROCEEDINGS

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

(3) In an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, invasion of privacy or seduction, a plaintiff who recovers less than \$50 damages shall recover no more costs than damages.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.01; 1981 c. 317.

814.02 Costs limited, discretionary. (1) When several actions are brought against parties who might have been joined as defendants and the actions are consolidated under s. 805.05 (1) no costs, other than disbursements, shall be allowed to the plaintiff in excess of what he would be entitled to had he brought but one action.

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

History: Sup. Ct. Order, 67 W (2d) 761, 780; Stats. 1975 s. 814.02

Courts can make a determination of the reasonableness of attorneys fees even where a note specifies the amount. *Lakeshore C. F. Corp. v. Bradford A. Corp.* 45 W (2d) 313, 173 NW (2d) 165.

814.025 Costs upon frivolous claims and counterclaims.

(1) If an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense or cross complaint commenced, used or continued by a defendant is

found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs determined under s. 814.04 and reasonable attorney fees.

(2) The costs and fees awarded under sub. (1) may be assessed fully against either the party bringing the action, special proceeding, cross complaint, defense or counterclaim or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) In order to find an action, special proceeding, counterclaim, defense or cross complaint to be frivolous under sub. (1), the court must find one or more of the following:

(a) The action, special proceeding, counterclaim, defense or cross complaint was commenced, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense or cross complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

(4) To the extent s. 802.05 is applicable and differs from this section, s. 802.05 applies.

History: 1977 c. 209; 1987 a. 256.

Trial court's finding that claim was not frivolous was against great weight and clear preponderance of evidence. *Sommer v. Carr*, 95 W (2d) 651, 291 NW (2d) 301 (Ct. App. 1980).

This section is not applicable in quasi-criminal actions (ordinance violations) where decision to proceed is based on prosecutorial discretion. *City of Janesville v. Wiskia*, 97 W (2d) 473, 293 NW (2d) 522 (1980).

Trial court must apply objective test to support finding that claim was frivolous. *Sommer v. Carr*, 99 W (2d) 789, 299 NW (2d) 856 (1981).

This section does not permit award of attorney's fees for a frivolous appeal. Determination of frivolity discussed. In *Matter of Estate of Bilsie*, 100 W (2d) 342, 302 NW (2d) 508 (Ct. App. 1981).

Court may not impose joint and several liability under this section. Frivolity discussed. *State v. State Farm Fire & Cas. Co.* 100 W (2d) 582, 302 NW (2d) 827 (1981).

See note to 799.25, citing *Hessenius v. Schmidt*, 102 W (2d) 697, 307 NW (2d) 232 (1981).

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91-92 Wis. Stats. 4654

Motion for relief under 806.07 was frivolous. Court erred by allowing travel expenses as costs. *Wengerd v. Rinehart*, 114 W (2d) 575, 338 NW (2d) 861 (Ct. App. 1983).

Arguments that "reduction clauses" in uninsured motorist provisions are invalid and that release does not bar subsequent claim against insurer for tort of bad faith were frivolous. *Radlein v. Industrial Fire & Cas. Ins. Co.* 117 W (2d) 605, 345 NW (2d) 874 (1984).

Denial of defendant's motion for directed verdict did not bar court from finding plaintiff's action to be frivolous. Court may find some claims constituting an action frivolous and others not frivolous. *Stoll v. Adriansen*, 122 W (2d) 503, 362 NW (2d) 182 (Ct. App. 1984).

Court may award attorney fees if petitioner's claim was frivolously brought before it on review under ch. 227, but may not award attorney fees incurred at various agency levels. *Tatum v. LIRC*, 132 W (2d) 411, 392 NW (2d) 840 (Ct. App. 1986).

Section penalizes parties who bring frivolous lawsuits and does not penalize parties for unacceptable tactics in course of proceedings. *Gagnow v. Haase*, 149 W (2d) 542, 439 NW (2d) 593 (Ct. App. 1989).

Claim of intentional infliction of emotional distress was frivolous. *Braski v. AH-NE-PEE Dimensional Hardwood, Inc.* 630 F Supp 862 (1986).

Trial court erred in finding frivolousness on attorney's part based upon court's assessment of credibility of client. *Blankenship v. Computers & Training*, 158 W (2d) 702, 462 NW (2d) 918 (Ct. App. 1990).

See note to 809.25 citing *Minniecheske v. Griesbach*, 161 W (2d) 743, 468 NW (2d) 760 (Ct. App. 1991).

Is Wisconsin's frivolous claim statute frivolous? *Endress*, 68 MLR 279 (1985).

Awarding reasonable attorney fees upon frivolous claims and counterclaims under s. 814.025. *Sundby*, WBB May 1980.

814.03 Costs to defendant. (1) If the plaintiff is not entitled to costs under s. 814.01 (1) or (3), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint, except as provided in ss. 943.46 (3) (c) and 943.47 (4) (b).

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

History: Sup. Ct. Order, 67 W (2d) 761, 780; Stats. 1975 s. 814.03; 1987 a. 345.

Section contemplates awarding of costs only to successful parties. *DeGroof v. Schmude*, 71 W (2d) 554, 238 NW (2d) 730.

814.035 Costs upon counterclaims and cross complaints.

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

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

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.035

Awarding statutory costs to the lessee and denial of costs to the lessor (whose recovery for unpaid instalments of rent under the agreement was reduced by the damages the lessee sustained) was, under 271.035 (2) and (3), Stats. 1969, a matter within the trial court's discretion, the language of the statute indicating that costs are purely discretionary when both parties recover on their respective claims in one action, and there being no showing that the trial court herein abused its discretion. (So much of the opinion in *Zimmerman v. Dornbrook*, 6 W (2d) 567, implying that if both parties recover on their claims, as a matter of right costs should be allowed for each side, is modified accordingly.) *Mid-Continent Refrigerator Co. v. Straka*, 47 W (2d) 739, 178 NW (2d) 28.

Where judgment was ordered for defendant in plaintiff's action and also for defendant on one of several counterclaims, costs were properly awarded to defendant as to each. *Arrowhead Growers S. Co. v. Central Sands Prod.* 48 W (2d) 383, 180 NW (2d) 567.

814.036 Omnibus costs provision. If a situation arises in which the allowance of costs is not covered by ss. 814.01 to 814.035, the allowance shall be in the discretion of the court.

History: Sup. Ct. Order, 67 W (2d) 761, 780; Stats. 1975 s. 814.036.

Prevailing plaintiff in habeas corpus proceeding may not be awarded costs. *State ex rel. Korne v. Wolke*, 79 W (2d) 22, 255 NW (2d) 446.

814.04 Items of costs. Except as provided in ss. 93.20, 101.22 (6) (i) and (6m) (a), 814.025, 814.245, 895.035 (4), 895.75 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

(1) **ATTORNEY FEES.** (a) When the amount recovered or the value of the property involved is \$1,000 or over, attorney fees shall be \$100; when it is less than \$1,000 and is \$500 or over, \$50; when it is less than \$500 and is \$200 or over, \$25; and when it is less than \$200, \$15.

(b) When no money judgment is demanded and no specific property is involved, or where it is not practical to ascertain the money value of the rights involved, attorney fees under par. (a) shall be fixed by the court, but shall not be less than \$15 nor more than \$100.

(c) No attorney fees may be taxed on behalf of any party unless the party appears by an attorney other than himself or herself.

(2) **DISBURSEMENTS.** All the necessary disbursements and fees allowed by law; the compensation of referees; a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but the item may not exceed the authorized sheriff's fee for the same service; amounts actually paid out for certified copies of papers and records in any public office; postage, telegraphing, telephoning and express; depositions including copies; plats and photographs, not exceeding \$50 for each item; an expert witness fee not exceeding \$100 for each expert who testifies, exclusive of the standard witness fee and mileage which shall also be taxed for each expert; and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees shall not be taxed as a cost or disbursement.

(4) **INTEREST ON VERDICT.** Except as provided in s. 807.01 (4), if the judgment is for the recovery of money, interest at the rate of 12% per year from the time of verdict, decision or report until judgment is entered shall be computed by the clerk and added to the costs.

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

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

(7) **JUDGMENT OFFER NOT ACCEPTED.** If the offer of judgment pursuant to s. 807.01 is not accepted and the plaintiff fails to recover a more favorable judgment he shall not recover costs but the defendant shall have full costs to be computed on the demand of the complaint.

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

(9) **AGRICULTURAL USE OR PRACTICE NUISANCE ACTIONS.** In any nuisance action brought in which an agricultural use or an agricultural practice is alleged to be a nuisance, if the defendant prevails the defendant shall be allowed costs as provided in s. 823.08 (4). In this subsection, "agricultural

use" has the meaning specified in s. 91.01 (1) and "agricultural practice" means any activity associated with an agricultural use.

History: Sup. Ct. Order, 50 W (2d) vii; 1971 c. 141; Sup. Ct. Order, 67 W (2d) 761, 780; Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295

Comment of Judicial Council, 1971: Guardian ad litem fees shall not be taxed as a cost or disbursement. Present law permits guardian ad litem fees to be taxed as costs or disbursements [Re Order effective July 1, 1971]

Fees for an expert witness may be taxed only for the day he testifies, even though he was present in court on other days. *McLoone Metal Graphics, Inc v. Robers Dredge*, 58 W (2d) 704, 207 NW (2d) 616

A citizen who obtains an injunction in an action brought for the benefit of a municipality may not recover attorney's fees under (8) *Cobb v. Milwaukee County*, 60 W (2d) 99, 208 NW (2d) 848

Sub (4), being a general statute, does not govern the rate of interest on a jury verdict in condemnation because that is dealt with specifically by 32.05 (1) (b) and 138.04. *Weiland v. Dept. of Transportation*, 62 W (2d) 456, 215 NW (2d) 455

Sub (2) allows recovery of costs not exceeding \$50 for each individual plat and photograph. *Billingsley v. Zickert*, 72 W (2d) 156, 240 NW (2d) 375

Where plaintiff's damages were set by first verdict but the amount plaintiff could recover was not set until second verdict, plaintiff was entitled to interest from date of first verdict. *Nelson v. Travelers Ins. Co.* 102 W (2d) 159, 306 NW (2d) 71 (1981)

Court erred by taxing guardian ad litem and attorney fees as costs of suit against former guardian as surcharge or penalty. In *Matter of Guardianship & Estate of P. A. H.* 115 W (2d) 670, 340 NW (2d) 577 (Ct. App. 1983).

Photocopies may not be taxed as photographs. *Ramsey v. Ellis* 163 W (2d) 378, 471 NW (2d) 289 (Ct. App. 1991)

Discussion of award of attorney fees, disbursements and interest on verdict. *Zintek v. Perchik*, 163 W (2d) 439, 471 NW (2d) 522 (Ct. App. 1991)

Interest on the verdict under (4) does not apply to interest on the amount by which an original condemnation award was increased by a jury verdict under 32.05 (1) (b) 61 Atty. Gen. 114.

814.05 Bond premium as costs. Any party entitled to recover costs or disbursements in an action or special proceeding may include in such disbursements the lawful premium paid to an authorized insurer for a suretyship obligation.

History: 1977 c. 339.

Legislative Council Note, 1977: This provision is currently the 2nd sentence of s. 204.11. It has nothing to do with the law of insurance but deals solely with the proper taxing of costs in legal proceedings. As such it belongs in ch. 814 and is transferred there without change of meaning. The language is very slightly edited [Bill 258-S]

814.07 Costs on motion. Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding \$50, and may be absolute or directed to abide the event of the action.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.07.

814.08 Costs on appeal from municipal court; certiorari.

(1) In actions appealed from municipal court, where there is no new trial, if the judgment is affirmed or the appeal dismissed the respondent shall have costs; if reversed, the appellant; if affirmed in part and reversed in part, the court may award the costs or such part thereof as is just to either party. In actions appealed by the defendant from municipal court, where there is no new trial, if the judgment finding the defendant guilty under s. 800.09 is affirmed, or if the defendant's appeal is dismissed, the defendant shall pay the full costs of the transcript prepared under s. 800.14 (5), minus the \$10 transcript payment under s. 814.65. Where there is a new trial, costs shall be awarded to the successful party; but if the appeal is from a judgment in favor of the appellant he or she shall have costs only if he or she obtains a more favorable judgment, and otherwise the respondent shall have costs. In all those cases full costs shall be the applicable fee under s. 814.61 (8) and all disbursements made for return of the judge and officers' and witnesses' fees, together with all costs taxable in the municipal court in the action.

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.08; 1977 c. 305; 1981 c. 317; 1987 a. 389

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

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

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

(4) **COURT REVIEW.** The clerk shall note on the bill all items disallowed, and all items allowed, to which objections have been made. This action may be reviewed by the court on motion of the party aggrieved made and served within 10 days after taxation. The review shall be founded on the bill of costs and the objections and proof on file in respect to the bill of costs. No objection shall be entertained on review which was not made before the clerk, except to prevent great hardship or manifest injustice. Motions under this subsection may be heard under s. 807.13.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.10; Sup. Ct. Order, 141 W (2d) xxvi; 1987 a. 403.

Judicial Council Note, 1988: Sub. (4) is amended to allow motions to review costs to be heard by telephone conference. [Re Order effective Jan. 1, 1988]

Where the court included excessive attorney's fees in the judgment and the clerk did not tax costs, appellant need not ask for review under sub. (4) and can object on appeal. *Running v. Widdes*, 52 W (2d) 254, 190 NW (2d) 169

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.11.

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.12.

814.13 Referee; court to fix and allow fees. After the trial of any issue by a referee pursuant to a compulsory reference for that purpose his or her fees and expenses shall be fixed by the court in which his or her report has been filed and paid by the state as other circuit court expenses are paid. In all other cases the compensation of referees shall be \$3 for each day necessarily occupied with the business of the reference; but the parties may agree in writing upon any other rate of compensation.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.13; 1977 c. 449

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.131.

814.14 Fiduciary; liability for costs limited; bond premium. In any action or proceeding prosecuted or defended in any court in Wisconsin by an executor, administrator, guard-

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

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.14; 1979 c. 110 s. 60 (13)

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

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.15

814.16 Settlement, costs on. Except as provided in s. 93.20, upon settlement of an action no greater sum may be demanded for costs than at the rate prescribed in this chapter.

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.16; 1991 a. 39

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

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.19

814.22 What county to pay costs when venue changed or jury selected for use in another county, taxation, certification. (1) In all proceedings, including criminal actions, if a change of venue is had (except in cases where the change is made because the action was not brought in the proper county), the jury is selected for use in another county under s. 971.225 or an action, occupying a day or more, is tried outside the county wherein pending, the county in which the action was commenced shall pay to the county in which the action is tried or the jury is selected the following expenses arising out of the change of venue or jury selection:

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

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

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

(d) All lawful charges for boarding the jury.

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

(f) All charges for subpoenaing witnesses in any criminal case or proceedings and which are a proper charge against the county. The fees of such officers and jurors shall be estimated

for each day and part of a day, not less than half a day, occupied in disposing of any such action.

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

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

(3) If costs are to be taxed against a county under this section, the district attorney of the county where the action or proceeding was tried or in which the jury was selected shall serve upon the district attorney of the county sought to be charged with the expense a copy of the bill of expenses, together with 8 days notice of the time and place the bill will be taxed before the presiding judge of the court. No such bill of expense may be allowed unless the notice is given or is waived in writing.

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.22; 1977 c. 449; 1981 c. 115

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

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.23

Prevailing plaintiff in habeas corpus proceeding may not be awarded costs. State ex rel Korne v. Wolke, 79 W (2d) 22, 255 NW (2d) 446

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

History: Sup Ct Order, 67 W (2d) 761; Stats 1975 s. 814.24

814.245 Actions by state agencies. (1) The legislature intends that courts in this state, when interpreting this section, be guided by federal case law, as of November 20, 1985, interpreting substantially similar provisions under the federal equal access to justice act, 5 USC 504.

(2) In this section:

(a) "Nonprofit corporation" has the meaning designated in s. 181.02 (8).

(b) "Small business" means a business entity, including its affiliates, which is independently owned and operated, and which employs fewer than 25 full-time employees or which has gross annual sales of less than \$2,500,000.

(c) "Small nonprofit corporation" means a nonprofit corporation which employs fewer than 25 full-time employees.

(d) "State agency" does not include the public intervenor or citizens utility board.

(e) "Substantially justified" means having a reasonable basis in law and fact.

(3) If an individual, a small nonprofit corporation or a small business is the prevailing party in any action by a state agency or in any proceeding for judicial review under s. 227.485 (6) and submits a motion for costs under this section, the court shall award costs to the prevailing party, unless the court finds that the state agency was substantially justified in taking its position or that special circumstances exist that would make the award unjust.

(4) In determining the prevailing party in actions in which more than one issue is contested, the court shall take into account the relative importance of each issue. The court shall provide for partial awards of costs under this section based on determinations made under this subsection.

(5) If the court awards costs under sub. (3), the costs shall include all of the following which are applicable:

(a) The reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the case and reasonable attorney or agent fees. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that:

1. No expert witness may be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency which is the losing party.

2. Attorney or agent fees may not be awarded in excess of \$75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents, justifies a higher fee.

(b) Any other allowable cost specified under s. 814.04 (2).

(6) A party seeking an award under this section shall, within 30 days after final judgment in the action, submit to the clerk under s. 814.10 (1) an itemized application for fees and other expenses, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. Section 814.10 applies for the procedure for taxation of costs, except that the clerk shall allow the state agency 15 working days to respond under s. 814.10 (3).

(7) The court acting under s. 814.10 (4) may reduce the amount awarded under this section or deny an award if it finds that the prevailing party engaged in conduct which unduly and unreasonably delayed the action.

(8) An individual is not eligible to recover costs under this section if the person's properly reported federal adjusted gross income was \$150,000 or more in each of the 3 calendar years or corresponding fiscal years immediately prior to the commencement of the action. This subsection applies whether the person files the tax return individually or in combination with a spouse.

(9) If a state agency is ordered to pay costs under this section, the costs shall be paid from the applicable appropriation under s. 20.865 (1) (a), (g) or (q).

(10) Each state agency that is ordered to pay costs under this section or that recovers costs under sub. (11) shall report annually, as soon as is practicable after June 30, to the presiding officer of each house of the legislature the number, nature and amounts awarded, the claims involved in the action in which the costs were incurred, the costs recovered under sub. (11) and any other relevant information to aid the legislature in evaluating the effect of this section.

(11) If the court finds that the motion under sub. (3) is frivolous, the examiner may award the state agency all reasonable costs in responding to the motion. In order to find a motion to be frivolous, the court must find one or more of the following:

(a) The motion was submitted in bad faith, solely for purposes of harassing or maliciously injuring the state agency.

(b) The party or the party's attorney knew, or should have known, that the motion was without any reasonable basis in law or equity and could not be supported by a good faith

argument for an extension, modification or reversal of existing law.

History: 1985 a. 52; 1985 a. 182 s. 57; 1985 a. 332 s. 253.

Petitioner must receive at least some of requested relief in order to "prevail" under (3). *Kitsemble v. DHSS*, 143 W (2d) 863, 422 NW (2d) 896 (Ct. App. 1988).

30-day period in (6) commences at time matter is disposed of in favor of party following remand to administrative agency. *Sheely v. DHSS*, 150 W (2d) 320, 442 NW (2d) 1 (1989).

814.27 Security for costs. Except as provided in s. 655 27 (5) (a) 3, in all cases where it shall appear reasonable and proper the court may require the plaintiff to give sufficient security for such costs as may be awarded against him.

History: Sup. Ct. Order, 67 W (2d) 761; Stats 1975 s. 814 27; 1983 a. 158.

814.28 Security for costs. (1) DEFENDANT MAY REQUIRE. Except as otherwise provided by s. 814.29, the defendant may require the plaintiffs to file security for costs if the plaintiffs are all nonresidents; or are foreign corporations, nonresident executors, administrators, guardians, trustees or receivers; or are trustees or assignees of any debtor; or are imprisoned for crime for terms less than life; or shall take issue upon the answer of the garnishee.

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

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

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

History: Sup. Ct. Order, 67 W (2d) 761, 780; Stats 1975 s. 814.28.

814.29 Security for costs, service and fees for indigents.

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

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

(3) RECOVERY OF FEES. (a) A request for leave to commence or defend an action, proceeding, writ of error or appeal without being required to pay fees or costs or to give security for costs constitutes consent of the affiant and counsel for the affiant that if the judgment is in favor of the affiant the court

may order the opposing party to first pay the amount of unpaid fees and costs, including attorney fees under ss. 802.05, 804.12 (1) (c) and 814.025 and under 42 USC 1988 and to pay the balance to the plaintiff.

(b) If the affiant is a prisoner, as defined in s. 46.011 (2), or a person confined in a federal correctional institution located in this state, a request for leave to commence or defend an action, proceeding, writ of error or appeal without being required to pay fees or costs or to give security for costs constitutes consent as provided in par. (a), and, if the judgment is in favor of the opposing party, constitutes consent for the court to order the institution to deduct the unpaid fees and costs, including attorney fees listed in par. (a), from the amount in the inmate's account at the time the judgment was rendered.

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.29; 1981 c. 317; 1983 a. 538; 1989 a. 31.

Trial judge may refuse approval of affidavit of indigency, where complaint or affidavit to obtain waiver of costs and fees failed to give notice of claim upon which relief may be granted. *State ex rel. Rilla v. Dodge County Cir. Ct.* 76 W (2d) 429, 251 NW (2d) 476.

Bond requirement of 775.01 can be waived under 814.29 (1). *Boldt v. State*, 101 W (2d) 566, 305 NW (2d) 133 (1981).

Indigent in civil case is entitled to waiver of transcript fees on appeal if trial judge finds indigent believes he or she is entitled to redress sought on appeal. *Girouard v. Jackson Circuit Ct.* 155 W (2d) 148, 454 NW (2d) 792 (1990).

In making Girouard determination, trial court should specifically consider litigant's income and assets; expenses, including unusual expenses; and projected cost of the transcript requested. *State v. Jacobus*, 167 W (2d) 230, 481 NW (2d) 642 (Ct. App. 1992).

814.33 Additional security for costs. If any surety on any undertaking given under s. 814.28 shall remove from the state or be deemed at any time insufficient the court or presiding judge may require the plaintiff to give a new undertaking, and every person becoming surety thereon shall be liable for all costs, from the commencement of the action, in like manner as if he had been the original surety.

History: Sup. Ct. Order, 67 W (2d) 761, 780; Stats. 1975 s. 814.33.

814.34 Attorney for plaintiff liable for costs. In any case in which the defendant, at the time of the commencement of the action, may require security for costs the attorney for the plaintiff shall be liable for such costs not exceeding \$100, until security therefor is filed, whether such security shall have been required by the defendant or not; but such attorney may relieve himself from such liability by filing an undertaking as prescribed by s. 814.28, and giving notice thereof.

History: Sup. Ct. Order, 67 W (2d) 761, 781; Stats. 1975 s. 814.34.

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.46.

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.47.

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

History: Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.48.

814.49 Costs on dismissal for lack of jurisdiction or stay of proceedings. (1) COSTS ON DISMISSAL FOR LACK OF PERSONAL JURISDICTION. If on objection of any defendant made pursuant to s. 802.06 (2) the action is dismissed as to that defendant on the ground that the court lacks jurisdiction over his person, the court when entering judgment dismissing the action against the defendant may order the plaintiff to pay to the defendant all reasonable actual costs, disbursements and expenses of the action up to the judgment of dismissal, but the amount so recovered can in no case exceed the sum of \$500.

(2) COSTS ON STAY OF FURTHER PROCEEDINGS. Whenever any party obtains an order staying further proceedings in the action pursuant to s. 801.63, the court may award that party all statutory costs and disbursements in the action up to the order for stay.

History: Sup. Ct. Order, 67 W (2d) 758, 781; Stats. 1975 s. 814.49; Sup. Ct. Order, 130 W (2d) xxii.

Judicial Council Note, 1986: Sub. (2) is amended to give the court discretion to award or deny costs and disbursements when further proceedings are stayed pending trial in another state under s. 801.63 [Re Order eff. 7-1-86].

814.51 Jury fees; discretion of court. The court shall have discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror fees for a jury, including all mileage costs, against either the plaintiff or defendant or to divide the cost and assess the cost against both plaintiff and defendant, or additional parties plaintiff or defendant, if a jury demand has been made in any case and if a jury demand is later withdrawn within 2 business days prior to the time set by the court for the commencement of the trial. The party assessed shall be required to make payment to the clerk of circuit court within a prescribed period and the payment thereof shall be enforced by contempt proceedings.

History: 1971 c. 297; Sup. Ct. Order, 67 W (2d) 761; Stats. 1975 s. 814.51; 1977 c. 318.

This section is inapplicable where parties reached settlement after selecting jury and making opening statements. *Jacobson v. Avestruz*, 81 W (2d) 240, 260 NW (2d) 267.

Accused who cancels jury trial at last moment to accept plea bargain risks both taxation of costs under 973.06 and assessment of jury fees under 814.51. *State v. Foster*, 100 W (2d) 103, 301 NW (2d) 192 (1981).

Circuit courts do not have authority to impose penalty for cancellation of jury trial beyond that provided for in this section. *Collins v. American Family Mut. Ins. Co.* 153 W (2d) 477, 451 NW (2d) 429 (1990).

SUBCHAPTER II

COURT FEES

814.60 Criminal actions; fees of the clerk of court. (1) In a criminal action, the clerk of court shall collect a fee of \$20 for all necessary filing, entering, docketing or recording, to be paid by the defendant when judgment is entered against the defendant. Of the fees received by the clerk under this subsection, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(2) In addition to any fine imposed, a defendant shall be required to pay any applicable:

- (a) Penalty assessment imposed by s. 165.87;
- (ag) Jail assessment imposed by s. 302.46 (1);
- (aj) Automatic reinstatement assessment imposed by s. 345.54 (1);
- (am) Crime victim and witness assistance surcharge imposed by s. 973.045;
- (b) Domestic abuse assessment imposed by s. 971.37 (1m)
- (c) 1 or 973.055;
- (bm) Uninsured employer assessment imposed by s. 102.85 (4);
- (c) Driver improvement surcharge imposed by s. 346.655;

(cn) Drug abuse program improvement surcharge imposed by s. 161.41 (5).

(cs) Environmental assessment imposed by s. 144.992.

(d) Natural resources assessment imposed by s. 29.997; and

(e) Natural resources restitution payment imposed by s. 29.998.

(em) Wild animal protection assessment imposed by s. 29.9965.

(f) Weapons assessment imposed by s. 167.31 (5).

History: 1981 c. 317; 1983 a. 27; 1985 a. 36; 1987 a. 27, 339; 1989 a. 64, 107; 1991 a. 39.

Neither the clerk of court nor the county board has the authority to adopt a nonrefundable processing fee in the absence of a statute specifically providing for such fee. OAG 12-92

814.61 Civil actions; fees of the clerk of court. In a civil action, the clerk of court shall collect the fees provided in this section. Unless a specific exemption is provided, a governmental unit, as defined in s. 108.02 (17), shall pay fees under this section. The clerk shall collect the following fees:

(1) COMMENCEMENT OF ACTIONS. (a) 1. Except as provided under subd. 2, at the commencement of all civil actions and special proceedings not specified in ss. 814.62 to 814.66, \$60. Of the fees received by the clerk under this subdivision, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

2. Beginning with fees imposed on September 1, 1989, and ending with fees imposed on December 31, 1993, at the commencement of all civil actions and special proceedings not specified in ss. 814.62 to 814.66, \$75. Of the fees received by the clerk under this subdivision, the county treasurer shall pay \$45 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$15 of the \$45 to the appropriation under s. 20.680 (2) (j).

(b) In addition to the fee under par. (a), at the commencement of an action affecting the family as defined in s. 767.02, a fee of \$20 to be deposited by the county treasurer in a separate account to be used by the county exclusively for the purposes specified in s. 767.11.

(c) Paragraphs (a) and (b) do not apply to any action to determine paternity brought by the state or its delegate under s. 767.45 (1) (g) or (h).

(2) CHANGE OF VENUE. (a) Except as provided in par. (b), on a change of venue at commencement in the court to which the action is transferred, a fee equal to the fee paid by the plaintiff to commence the action. The transferring court, in its order for change of venue, shall make a finding as to which party's actions necessitated the change of venue and shall order that party to pay the fee, which shall not be taxed as a cost in the action.

(b) If the court orders a change of venue under s. 801.52, no fee may be charged.

(3) THIRD-PARTY COMPLAINT. (a) Except as provided under par. (b), when any defendant files a 3rd-party complaint, the defendant shall pay a fee of \$40. The defendant shall pay only one such \$40 fee in an action. Of the fees received by the clerk under this paragraph, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(b) Beginning with the fees imposed on September 1, 1989, and ending with fees imposed on December 31, 1993, when any defendant files a 3rd-party complaint, the defendant shall pay a fee of \$45. The defendant shall pay only one such \$45 fee in an action. Of the fees received by the clerk under this paragraph, the county treasurer shall pay \$25 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall

credit \$5 of the \$25 to the appropriation under s. 20.680 (2) (j).

(4) JURY FEE. For a jury in all civil actions, except a garnishment action under ch. 812, a nonrefundable fee of \$6 per juror demanded to hear the case to be paid by the party demanding a jury within the time permitted to demand a jury trial. If the jury fee is not paid, no jury may be called in the action, and the action may be tried to the court without a jury.

(5) JUDGMENTS, WRITS, EXECUTIONS, LIENS, WARRANTS, AWARDS, CERTIFICATES. The clerk shall collect a fee of \$5 for the following:

(a) Issuing executions, certificates, commissions to take depositions, transcripts from judgment docket, and any writs not commencing an action or special proceeding.

(b) Filing and docketing judgments, transcripts of judgments, liens, warrants and awards, including filing and docketing assignments or satisfactions of judgments, liens or warrants and withdrawals, satisfactions and voidances of tax warrants under s. 71.91 (5) (g).

(6) FOREIGN JUDGMENTS. On filing a foreign judgment under s. 806.24, \$15.

(7) REVISION OF JUDGMENT OR ORDER IN ACTION AFFECTING THE FAMILY. (a) Except as provided in par. (b), upon the filing of any petition under s. 767.32 (1) or any motion, by either party, for the revision of a judgment in an action affecting the family, \$30. Of the fees received by the clerk under this paragraph, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(b) Upon the filing of any petition, motion or order to show cause by either party under s. 767.325 or 767.327, \$50. Of the fees received by the clerk under this paragraph, the county treasurer shall pay 25% to the state treasurer for deposit in the general fund, retain 25% for the use of the county and deposit 50% in a separate account to be used by the county exclusively for the purposes specified in s. 767.11.

(c) Paragraphs (a) and (b) do not apply to a petition or motion filed by the state or its delegate in connection with an action to determine paternity under s. 767.45 (1) (g).

(8) APPEAL FROM MUNICIPAL COURT OR ADMINISTRATIVE DECISION. (a) Except as provided under par. (am), on appeal from municipal court or on review of any administrative decision, including an appeal from a commission's award in a condemnation action under ch. 32:

1. If the appeal or review is by certiorari or on the record, \$35.

2. If a new trial is authorized and requested, \$50.

(am) Beginning with the fees imposed on September 1, 1989, and ending on December 31, 1993, on appeal from municipal court or on review of any administrative decision, including an appeal from a commission's award in a condemnation action under ch. 32:

1. If the appeal or review is by certiorari or on the record, \$40.

2. If a new trial is authorized and requested, \$55.

(b) Of the fees received by the clerk under par. (a), the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(c) Of the fees received by the clerk under par. (am) 1, the county treasurer shall pay \$22.50 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$22.50 to the appropriation under s. 20.680 (2) (j).

(d) Of the fees received by the clerk under par. (am) 2, the county treasurer shall pay \$30 to the state treasurer for

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deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$30 to the appropriation under s. 20.680 (2) (j).

(9) **TRANSMITTING DOCUMENTS.** For certifying and transmitting documents upon appeal, writ of error, change of venue, for enforcing real estate judgments in other counties, or for enforcing judgments in other states, \$15 plus postage.

(10) **COPIES.** For copies, certified or otherwise, of any document for which a specific fee is not established by this section, or for comparison and attestation of copies not provided by the clerk, \$1.25 per page.

(11) **SEARCHES.** For searching files or records to locate any one action when the person requesting the same does not furnish the docket or file number of the action, or to ascertain the existence or nonexistence of any instrument or record in the clerk's custody, \$5.

(12) **RECEIVING AND DISBURSING MONEY.** (a) *Trust funds and small estates.* 1. For receiving a trust fund, or handling or depositing money under s. 757.25, 807.10 (3) or 880.04 (2) (a), at the time the money is deposited with the clerk, a fee of \$10 or 0.5% of the amount deposited, whichever is greater. In addition, a fee of \$10 shall be charged upon each withdrawal of any or all of the money deposited with the clerk.

2. If the clerk is required by court order or by law to deposit any of the funds in subd. 1 in an account in a bank, savings bank, savings and loan association or other suitable financial institution, the type of account shall be in the clerk's discretion unless the court specifies a particular type of account in its order. In depositing the funds into any account, the clerk shall act as a conservator, not as a trustee, and shall not be held liable or responsible for obtaining any specific rate of interest on the deposit.

(b) *Maintenance payments and support.* For receiving and disbursing money deposited as payment for maintenance payments, child support or family support payments, under interim or final orders in an action affecting the family, and for maintaining the records required under s. 59.39 (9m), an annual fee of up to \$25 to be paid by each party ordered to make payments. The court shall order each party ordered to make payments to pay the annual fee at the time of, and in addition to, the first payment to the clerk in each year for which payments are ordered. At the time of ordering the payment of an annual fee, the court shall notify each party ordered to make payments of the requirement to pay the annual fee and of the amount of the annual fee. If the annual fee is not paid when due, the clerk shall not deduct the annual fee from the maintenance or support payment, but:

1. The clerk has standing to move the court for a remedial sanction under ch. 785.

3. The clerk may apply to the court or court commissioner for an assignment relating to the annual fee in accordance with s. 767.265.

(c) *Deposits in contempt proceedings.* For receiving and disbursing deposits made under s. 818.12 in contempt proceedings under ch. 785, \$10 per deposit. The \$10 fee shall be deducted from the deposit, unless the entire deposit is ordered returned to the defendant, before applying the deposit to the satisfaction of a judgment under s. 818.14.

(cm) *Maximum receiving and disbursing fee.* Beginning on August 15, 1991, the cumulative total for all annual fees owed by a party for each order but not paid to the clerk under par. (b) may increase only by any unpaid annual fee due from that party for that order under par. (b).

(13) **SUPPORT OR MAINTENANCE PETITION.** For the cost to the county of administering s. 46.25, whenever a person not receiving aid under s. 49.19, 49.46, 49.465, 49.468 or 49.47 files a petition requesting child support, maintenance or

family support payments, \$10 in addition to any other fee required under this section. This subsection does not apply to a petition filed by the state or its delegate.

History: 1981 c. 317; 1983 a. 27; 1983 a. 189 s. 329 (28); 1983 a. 228, 447, 538; 1985 a. 29, 169; 1987 a. 27 ss. 2143p, 3202 (24); 1987 a. 144, 355, 399; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 191; 1991 a. 39, 221, 269.

Discussion of circumstances under which additional fees under (13) are to be paid. 75 Atty Gen 1.

Enforcement of (12) (b) discussed. 76 Atty Gen 100.

Clerk's authority under (12) (b) discussed. 76 Atty Gen 265.

See note to 814.60 citing OAG 12-92.

If a domestic abuse petition is filed under 813.12 (2) in conjunction with or in a pending action affecting the family no separate filing fee is required. OAG 14-92.

814.615 Fees for mediation and studies. (1) (a) Except as provided under sub. (2), for family court counseling services provided under s. 767.11 a county shall collect the following fees:

1. For the first mediation session conducted upon referral under s. 767.11 (5), no fee.

2. For all mediation provided after the first session mediation described under subd. 1, a single fee of \$200, regardless of the number of mediation sessions held.

3. For a study under s. 767.11 (14), a fee of \$300.

(b) The county shall determine when and how to collect the fees under par. (a). Subject to sub. (3), the county shall reduce the fees in accordance with the parties' ability to pay or provide the services without payment of the fees if both parties are unable to pay.

(2) In lieu of the fee under sub. (1) (a) 2 or 3, a county may establish a fee schedule to recover its reasonable costs of providing family court counseling services under s. 767.11. A fee schedule established under this subsection may apply in lieu of the fee under sub. (1) (a) 2 or 3 or both, and shall require no fee for the first mediation session conducted upon referral under s. 767.11 (5); provide for payment for any other services based on the parties' ability to pay; and take into account the fees the county collects under s. 814.61 (1) (b) and (7) (b). Fees shall be based on services actually provided. The county may not collect a single fee applicable without regard to the number of sessions or services provided. Subject to sub. (3), the county shall provide family court counseling services to the parties even if both parties are unable to pay.

(3) The court or family court commissioner shall direct either or both parties to pay any applicable fee under this section. If either or both parties are unable to pay, the court shall grant a separate judgment for the amount of the fees in favor of the county and against the party or parties responsible for the fees.

(4) The county treasurer shall deposit fees collected under this section in a separate account for the exclusive purpose of providing mediation services and studies under s. 767.11.

History: 1987 a. 355; 1991 a. 269.

NOTE: 1987 Wis. Act 355, which created this section, contains explanatory notes.

814.62 Fees in garnishment, wage earner and small claims actions. The clerk of court shall collect the fees provided in this section. Unless a specific exemption is provided, a governmental unit, as defined in s. 108.02 (17), shall pay fees under this section. The clerk shall collect the following fees:

(1) **GARNISHMENT ACTIONS.** (a) Except as provided under par. (b), the fee for commencing a garnishment action under ch. 812, including actions under s. 799.01 (1) (d) 2, is \$15. Of the fees received by the clerk under this paragraph, the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(b) Beginning with fees imposed on September 1, 1989, and ending with fees imposed on December 31, 1993, the fee for commencing a garnishment action under ch. 812, including actions under s. 799.01 (1) (d) 2, is \$20. Of the fees received by the clerk under this paragraph, the county treasurer shall pay \$12.50 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$12.50 to the appropriation under s. 20.680 (2) (j).

(2) **WAGE EARNER ACTIONS.** The fee for commencing wage earner amortization proceedings under s. 128.21 is \$10.

(3) **SMALL CLAIMS ACTIONS.** (a) 1. Except as provided under subd. 2, in a small claims action under ch. 799, at the time of issuance of a summons or other process in a proceeding not commenced by a summons, the plaintiff shall pay to the clerk of court a fee of \$17.

2. Beginning with the fees imposed on September 1, 1989, and ending with the fees imposed on December 31, 1993, in a small claims action under ch. 799, at the time of issuance of a summons or other process in a proceeding not commenced by a summons, the plaintiff shall pay to the clerk of court a fee of \$22.

(b) If a counterclaim or cross complaint is filed under s. 799.02 (1), the person filing the same shall pay a fee equal to the difference between the fee under s. 814.61 (1) (a) and the fee under par. (a).

(c) For all other services of the clerk in a small claims action, the clerk shall collect the fees prescribed in s. 814.61.

(d) 1. Except as provided in subds. 2 and 3, of the fees received by the clerk under pars. (a) 1 and (b), the county treasurer shall pay 40% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

2. Beginning with the fees imposed on September 1, 1989, and ending with the fees imposed on December 31, 1993, of the fees received by the clerk under par. (a) 2, the county treasurer shall pay \$11.80 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit the \$11.80 to the appropriation under s. 20.680 (2) (j).

3. Beginning with the fees imposed on September 1, 1989, and ending with the fees imposed on December 31, 1993, of the fees received by the clerk under par. (b), the county treasurer shall pay \$27.20 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$10 of the \$27.20 to the appropriation under s. 20.680 (2) (j).

(e) If any party files a demand for a jury trial in any action under ch. 799, the party demanding the jury trial shall pay a fee equal to the difference between the fee under s. 814.61 (1) (a) and the fee under par. (a), in addition to the fee under s. 814.61 (4).

(4) **MAILING FEE.** For service by mail under s. 799.12 (3), the clerk shall collect \$2 for each defendant to cover the expense of mailing. If service by certified mail return receipt requested is required, the clerk shall collect for each defendant \$2 plus the cost for the certified mailing, rounded up to the nearest dollar.

History: 1981 c. 317; 1983 a. 27; 1985 a. 29; 1987 a. 208, 399; 1989 a. 31, 359; 1991 a. 39.

814.63 Fees in forfeiture actions. (1) (a) Except as provided in par. (b), in all forfeiture actions in circuit court, the clerk of court shall collect a fee of \$15 to be paid by the defendant when judgment is entered against the defendant.

(b) Beginning with the fees imposed on September 1, 1989, and ending on December 31, 1993, in all forfeiture actions in

circuit court, the clerk of court shall collect a fee of \$20 to be paid by the defendant when judgment is entered against the defendant.

(c) This subsection does not apply to an action for a violation of s. 101.123 (2) (a) or (5) or a safety belt use violation under s. 347.48 (2m).

NOTE: Par. (c) is amended eff. 10-1-93 by 1991 Wis. Act 130 to read:

(c) This subsection does not apply to an action for a violation of s. 101.123 (2) (a) or (am) 1 or (5) or a safety belt use violation under s. 347.48 (2m).

(2) Upon the disposition of a forfeiture action in circuit court for violation of a municipal ordinance, except an action for a safety belt use violation under s. 347.48 (2m), the municipality shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

(3) In addition to any forfeiture imposed, the defendant shall be required to pay any applicable:

(a) Penalty assessment imposed by s. 165.87.

(ag) Jail assessment imposed by s. 302.46 (1).

(aj) Automatic reinstatement assessment imposed by s. 345.54 (1).

(ar) Domestic abuse assessment imposed by s. 973.055 (1).

(b) Driver improvement surcharge imposed by s. 346.655.

(bm) Uninsured employer assessment imposed by s. 102.85 (4).

(bs) Environmental assessment imposed by s. 144.992.

(c) Natural resources assessment imposed by s. 29.997.

(d) Natural resources restitution payment imposed by s. 29.998.

(e) Wild animal protection assessment imposed by s. 29.9965.

(eg) Fishing shelter removal assessment imposed by s. 29.9967.

(er) Snowmobile registration restitution payment imposed by s. 350.115.

(f) Weapons assessment imposed by s. 167.31 (5).

(4) In forfeiture actions in which a municipality prevails, costs and disbursements shall be allowed to the municipality subject only to sub. (2) and such other limitation as the court may direct.

(5) (a) Of the fees received by the clerk under sub. (1) (a), the county treasurer shall pay 50% to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county.

(b) Of the fees received by the clerk under sub. (1) (b), the county treasurer shall pay \$12.50 to the state treasurer for deposit in the general fund and shall retain the balance for the use of the county. The state treasurer shall credit \$5 of the \$12.50 to the appropriation under s. 20.680 (2) (j).

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130.

Municipality must pay five dollar fee imposed under (2), upon disposition of a forfeiture action in court for municipal ordinance violation; the fee may not be passed on to the defendant. OAG 2-92.

See note to 814.60 citing OAG 12-92.

814.635 Fee for automation. (1) Except for an action for a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$3 court automation fee from any person, including any governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3) or (8) (a) 1 or 2, 814.62 (1), (2) or (3) (a) or (b) or 814.63 (1). The court automation fee is in addition to the other fees listed in this subsection.

(2) The clerk shall pay the moneys collected under sub. (1) to the county treasurer under s. 59.395 (5). The county treasurer shall pay those moneys to the state treasurer under s. 59.20 (11).

History: 1987 a. 27; 1989 a. 22; 1991 a. 26, 39.

814.64 COURT COSTS AND FEES

814.64 Fees on appeal to court of appeals or supreme court. The fees on appeal to the court of appeals and the supreme court are prescribed in s. 809.25 (2).

History: 1981 c 317.

814.65 Fees of the municipal court. (1) COURT COSTS. In a municipal court action, except an action for violation of an ordinance in conformity with s. 347.48 (2m), the municipal judge shall collect a fee of \$15 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons or the action is tried as a contested matter. Of each \$15 fee received by the judge under this subsection, the municipal treasurer shall pay monthly one-third to the state treasurer for deposit in the general fund and shall retain the balance for the use of the municipality.

(2) WITNESS AND INTERPRETER'S FEES. The fees of witnesses and interpreters shall be paid as specified in s. 814.67.

(3) ATTORNEY FEES. A municipal court shall not impose and collect attorney fees.

(4) TAXATION OF FEES AND COSTS. (a) Other than fees specified in sub. (1) and costs specified in par. (b), no fees or costs are taxable by a municipality to a party before a municipal court unless it is directly chargeable to the municipality as a disbursement, such as service of process costs.

(b) If service of process is accomplished by municipal personnel, the cost of the service prescribed under ss. 814.70 and 814.71, subject to any modification applicable under s. 814.705, is taxable regardless of whether a separate disbursement is made to specifically reimburse the municipal employee or agency.

(5) COSTS AND FEES ON APPEAL. On appeal from municipal court, the appellant shall pay the fee prescribed in s. 814.61 (8). The appellant shall also pay a fee of \$10 for the transcript prepared under s. 800.14 (5). Costs shall be as provided in s. 814.08.

History: 1981 c 317; 1983 a 107; 1987 a 181, 389, 399, 403; 1989 a 22; 1991 a 26.

814.66 Fees of register in probate. (1) The register in probate shall collect the following fees:

(a) 2. For filing a petition whereby any proceeding in estates of deceased persons is commenced, if the gross estate or value of the property is \$10,000 or less, a fee of \$10; if the gross estate is more than \$10,000, a fee of 0.1% of the amount of the gross estate.

3. The fees shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate in the proceedings, and shall apply to inventories filed in testamentary trusts and to the proceeds passing by virtue of revocable inter vivos trusts. The fees fixed in this paragraph shall also be paid in survivorship proceedings, and in the survivorship proceedings the value shall be based on the value of the property passing to the survivors.

(b) 2. For filing a petition for guardianship of the estate under ch. 880 or an application for conservatorship under ch. 880, if the gross estate or value of the property is \$10,000 or less, a fee of \$10; if the gross estate is more than \$10,000, a fee of 0.1% of the amount of the gross estate.

3. The fee shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate in the proceedings.

(c) For a certificate terminating a life estate or homestead interest, \$3, but the fee shall not be collected if the termination is consolidated with probate or administration proceedings.

(d) For a certificate or judgment of descent of lands, the same fees shall be charged and collected as are charged in

estate proceedings in par. (a) based upon the valuation of the property passing by the certificate or judgment of descent.

(e) For filing objections to the probate of a will, \$20, except that this fee may be waived by the court when objection is filed by a guardian ad litem or attorney, or attorney-in-fact, for a person in the military service. The court may order a refund of the fee to the objector from the assets of the estate.

(f) For receiving a will for safekeeping, except under s. 856.05 (1), \$10.

(g) For each certificate issued by the registers in probate or circuit judges, \$3.

(h) For copies, certified or otherwise, of records or other papers in the custody and charge of registers in probate, or for the comparison and attestation of copies not provided by the registers, \$1 per page.

(i) For filing claims against estates, \$3. The \$3 fee shall be added on to the amount of the claim and may be recovered as part of the claim.

(j) For searching files or records to locate any one action when the person requesting the same does not furnish the docket or file number of the action, or to ascertain the existence or nonexistence of any instrument or record in the clerk's custody, \$4.

(k) For receiving a power of attorney for health care instrument for safekeeping, as provided under s. 155.65 (1), \$8.

(L) For receiving a declaration for safekeeping, as provided under s. 154.13 (1), \$8.

(2) For purposes of determining fees payable under sub. (1), the following shall apply:

(a) United States government bonds which by their terms are payable to another person upon death of the original registered owner are included in his or her gross estate and not subject to the fee for terminating a life estate.

(b) Life insurance, retirement benefits or annuities are excluded unless paid or payable to the estate or personal representative in which case they are included.

(c) If survivorship proceedings are pursued independent of probate or administration, a fee shall be collected for each proceeding, and the fee shall not be less than that payable if the proceedings were consolidated.

(d) Proceedings to administer assets subsequent to entry of final judgment in an estate are subject to fees as separate proceedings. The fees shall not be less than those which would have been chargeable if the assets had been included in the original proceedings.

(e) The value of decedent's interest in real estate shall be diminished by the unpaid balance on duly recorded or filed liens and mortgages.

(f) Special administrations are subject to filing fees, the fees to be credited upon fees for subsequent general administration or probate.

(3) The register in probate shall, on the first Monday of each month, pay into the office of the county treasurer all fees collected by him or her and in his or her hands and still unclaimed as of that day. Each county treasurer shall make a report under oath to the state treasurer on or before the 5th day of January, April, July and October of all fees received by him or her under sub. (1) (a) to (f) up to the first day of each of those months and shall at the same time pay 50% of the fees to the state treasurer for deposit in the general fund. Each county treasurer shall retain the balance of fees received by him or her under this section for the use of the county.

History: 1981 c 317; 1985 a 329; 1989 a 56; 1991 a 220, 281.

"Fee" under (1) based on value of estate is in reality a tax. Tax does not violate constitution. *Treiber v. Knoll*, 135 W (2d) 58, 398 NW (2d) 756 (1987).

814.67 Fees of witnesses and interpreters. (1) The fees of witnesses and interpreters shall be as follows:

(a) For attending before a municipal judge, an arbitrator, or any officer, board or committee:

1. For witnesses, \$5 per day.
2. For interpreters, \$10 per one-half day or such higher fees as the municipality or county board may establish.

(b) For attending before any other court:

1. For witnesses, \$16 per day.
2. For interpreters, \$35 per one-half day.

(c) For traveling, at the rate of 20 cents per mile going and returning from his or her residence if within the state; or, if without the state, from the point where he or she crosses the state boundary to the place of attendance, and returning by the usually traveled route between such points.

(2) A witness or interpreter is entitled to fees only for the time he or she is in actual and necessary attendance as such; and is not entitled to receive pay in more than one action or proceeding for the same attendance or travel on behalf of the same party. A person is not entitled to fees as a witness or interpreter while attending court as an officer or juror. An attorney or counsel in any cause may not be allowed any fee as a witness or interpreter therein.

History: 1981 c. 317; 1987 a. 27

814.68 Fees of court commissioners. (1) PART-TIME COURT COMMISSIONERS. A part-time court commissioner appointed under s. 757.68 (2) shall collect the following fees:

(a) A fee of \$1 for each decision, signing or filing of a document or other ministerial act required by law performed by a part-time court commissioner. This paragraph does not apply to testimonial proceedings or depositions taken before a court commissioner.

(b) For the following duties performed by a part-time court commissioner held in the county courthouse or other court facilities provided by law, reasonable compensation as fixed by the court but not more than the hourly equivalent of the salary of a judge of the court:

1. Every attendance upon the hearing of any motion for an order which a court commissioner is authorized to grant and for attendance upon any motion or an official act to be done by the court commissioner.
2. Conducting a hearing and deciding on the issuance of a writ of habeas corpus, certiorari, ne exeat and alternate writs of mandamus.
3. Attendance upon the taking of testimony or examination of witnesses in any matter held outside the county courthouse or other court facilities provided by law, whether acting as a referee or otherwise.

(2) SUPPLEMENTARY EXAMINATIONS. For attendance upon an examination under ch. 816, a court commissioner shall collect a fee of \$15 to be paid upon the issuance of the order under s. 816.03 (1). The fee shall be returned in any case where it appears by affidavit filed that the order was not served upon the judgment debtor. This fee is the only fee a court commissioner is entitled to for proceedings under ch. 816.

History: 1981 c. 317

814.69 Fees of court reporters; transcripts. A court reporter shall collect the following fees:

(1) For a transcript under SCR 71.04, a fee at the rate of \$1.50 per 25-line page for the original and 50 cents per 25-line page for the duplicate. Except as provided in s. 967.06, the fee shall be paid by the county treasurer upon the certificate of the clerk of court.

(2) For a transcript under s. 757.57 (5), a fee from the party requesting the transcript at the rate of \$1.75 per 25-line page for the original and 60 cents per 25-line page for each copy. If

the request is by the state or any political subdivision thereof, the fees of the reporter shall be at the rates provided in sub. (1).

(3) A reporter may make a special charge, pursuant to arrangement with the party requesting the same, for furnishing typewritten transcripts of testimony and proceedings from day to day during the progress of any trial or proceeding.

(4) For purposes of this section, a page other than the final page of a transcript shall consist of any 25 or more consecutive typewritten lines, double-spaced, on paper not less than 8 1/2 inches in width, with a margin of not more than 1 1/2 inches on the left and five-eighths of an inch on the right, exclusive of lines disclosing page numbering; type shall be standard pica with 10 letters to the inch. Questions and answers shall each begin a new line. Indentations for speakers or paragraphs shall be not more than 15 spaces from the left margin.

History: 1981 c. 317; 1985 a. 29; 1985 a. 332 s. 253.

Counties are not required to provide free copy machine services for court reporters who collect fees under (2) for furnishing transcripts to parties 79 Atty. Gen. 157

814.70 Fees of sheriffs. The sheriff shall collect the fees under this section. The fees are set as follows, unless a higher fee is established under s. 814.705:

(1) SERVICE OF PROCESS. For each service or attempted service of a summons or any other process for commencement of an action, a writ, an order of injunction, a subpoena or any other order, \$12 for each defendant or person. If there is more than one defendant or person to be served at a given address, \$6 for each additional defendant or person.

(2) EXECUTION ON JUDGMENT. For serving an execution on a judgment demanding payment thereof or other writ not provided for, \$12.

(3) TRAVEL; CIVIL PROCESS. For travel in serving any summons, writ or other process, except criminal warrants:

(a) In counties having a population of less than 500,000, 25 cents for each mile actually and necessarily traveled.

(b) In counties having a population of 500,000 or more, \$4 for each party to be served in each action. Only one charge may be imposed if there is more than one person to be served at a given address.

(4) TRAVEL; CRIMINAL PROCESS. For travel in serving any criminal process:

(a) In counties having a population of less than 500,000, 25 cents per mile.

(b) In counties having a population of 500,000 or more, \$4 for each person served within the county from which process issued, or 25 cents per mile if served outside the county.

(c) The actual and necessary disbursements for board and conveyance of the prisoner.

(5) COLLECTION OF MONEY. For collecting and paying over all sums upon any execution, writ or process for the collection of money, 10% on the first \$300; 5% on the next \$300 or any part thereof; and 3% on any excess over \$600; but the whole fee may not exceed \$60.

(6) COPIES. Making a copy of any bond, undertaking, summons, writ, complaint or other paper served or taken, when required by law or demanded by a party, and if not furnished by a party to the action or attorney, \$1 per page.

(7) ADVERTISING PERSONAL PROPERTY. Advertising goods and chattels for sale upon execution, writ or process, \$1.50. If there is more than one execution, writ or process in the hands of the sheriff against the same defendants, there shall be only one advertising fee charged in the whole, which shall be on the execution having priority.

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(8) SEIZURE OF PROPERTY; EVICTIONS. For serving any writ or other process with the aid of the county, \$8; and \$10 per hour for each deputy assigned to inventory the property when seizing property on attachment, replevin, execution or evicting on a writ of restitution or writ of assistance, plus all necessary expenses incurred thereby.

(9) SALES OF REAL ESTATE. (a) A fee of \$50, of which \$25 shall be prepaid and nonrefundable, for all necessary activities of the sheriff in connection with the sale of real estate by the sheriff or other officers, under any judgment or order of court, and making all the necessary papers and notices, including but not limited to:

1. Drawing an advertisement of real estate.
2. Issuing every certificate of sale of real estate.
3. Drawing, executing and acknowledging a deed pursuant to a sale of real estate.
4. Posting notices of sheriff's sale.
5. Filing a copy of certificate of sale with register of deeds.

(b) For travel in making the sale, to be computed from the courthouse, 20 cents per mile going and returning.

(10) PERSONAL PROPERTY; POSSESSION AND STORAGE. All necessary expenses incurred in taking possession of any goods or chattels and preserving the same as shall be just and reasonable in the opinion of the court.

(11) PRINTING ADVERTISEMENTS. All fees allowed by law and paid to any printer for any advertisement required to be published by the sheriff.

(12) NOTICES OF SALE. For the posting of notices of sale of personal property or posting any other notice and making a

return thereon, \$4 for the first posting and \$2 for each additional posting.

History: 1981 c. 317; 1983 a. 92; 1987 a. 181.

Fees for mileage may only be collected if service is successful. 73 Atty. Gen. 106.

814.705 Governing body may establish higher fees. With respect to fees enumerated in s. 814.70 (1), (2), (3) (a) and (b) and (4) (a) and (b):

(1) A county board may establish a higher fee for collection by the sheriff.

(2) A city council may establish a higher fee for collection by the city constable and city police.

(3) A village board may establish a higher fee for collection by the village marshal and village constable.

(4) A town board may establish a higher fee for collection by the town constable.

History: 1987 a. 181.

814.71 Fees of city police, constables and village marshals. City police, constables and village marshals shall collect the same fees as those prescribed for sheriffs in s. 814.70 for similar services subject to any modification applicable under s. 814.705.

History: 1981 c. 317; 1987 a. 181.

814.72 Fees of appraisers. For appraisals under s. 815.19, each appraiser shall collect a fee of \$8, plus \$10 per hour. The fee shall be paid by the officer and returned as a disbursement on the writ of attachment or execution.

History: 1981 c. 317.