

CHAPTER 324.

APPEALS AND MISCELLANEOUS PROVISIONS.

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324.01 Appeals from county court; guardian ad litem. (1) In counties having a population of fifteen thousand or less any executor, administrator, guardian, trustee or any person aggrieved by any order or judgment of the county court may appeal therefrom to the circuit court for the same county by filing a notice thereof with said county court within sixty days from the date of the act appealed from.

(2) In counties having a population of over fifteen thousand any executor, administrator, guardian, trustee or any person aggrieved by any order or judgment of the county court may appeal therefrom to the supreme court, and the provisions of chapter 274 shall apply.

(3) But there is no appeal from the action of any county court on any claim unless the part thereof in dispute amounts to at least \$20. The appeal of any minor from an order of adoption may be taken by any person on his behalf. In an appeal from an order of adoption, if the child is a minor, the state department of public welfare is a party and shall be served with notice of appeal. In all other cases the appeal of any minor or incompetent person may be taken and prosecuted by his general guardian or by a guardian ad litem.

Cross Reference: Time allowed for appeal to supreme court, see 324.04.

324.02 Bond on appeal to circuit court. In appeals to the circuit court the appellant, other than an executor, administrator, guardian, trustee or alleged incompetent person, shall, before his appeal shall be effectual, file with the county court a bond in such sum and with such surety as the judge thereof shall approve, to the effect that he will diligently prosecute his appeal to effect and pay all damages and costs which may be awarded against him on such appeal; but no bond shall be required of nor costs awarded against any child, or person acting in behalf of a child, on an appeal from an order of adoption.

324.03 Notice of appeal to circuit court; transmission of papers; trial. (1) The appellant shall give notice of the appeal to the adverse party, in such manner as the county court shall direct within ten days after taking the same, and the county judge shall, within twenty days after the appeal is perfected, file in the circuit court the record and proceedings appealed from, together with the notice of appeal and bond and proof of service of notice of appeal on the adverse party.

(2) When such record, notice of appeal, bond and proof of service are filed in the circuit court the appeal may be brought to trial and tried in the same manner as actions originally brought there; and such court may direct an issue to be made up between the parties.

324.04 Review by supreme court. (1) The time within which a writ of error may be issued or an appeal taken to obtain a review by the supreme court of any order or judgment of the county court is limited to sixty days from the date of the entry thereof, except as provided in section 324.05.

(2) On appeals from county courts to the supreme court no bond shall be required or costs awarded against any child or person acting in behalf of the child on an appeal from an order of adoption; and no bond shall be required of any executor, administrator, guardian, trustee or alleged insane or incompetent person.

(3) A bill of exceptions may be settled, served and filed in the manner and under the restrictions required in the circuit court.

(4) In all matters not otherwise provided for in this chapter relating to appeals from county courts to the supreme court, and jury trials in county courts, the law and rules of practice relating to circuit courts shall govern.

Cross Reference: When bond not required, see 274.16.

324.05 Extension of time for appeal; retrial. If any person aggrieved by any act of the county court shall, from any cause without fault on his part, omit to take his appeal within the time allowed, the court may, upon his petition and notice to the adverse party, and upon such terms and within such time as it shall deem reasonable, but not later than one year after the act complained of, 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, but the order therefor must be made within one year after the act complained of.

324.06 Proceedings stayed. After notice of appeal to the circuit court is filed in the county court all further proceedings in pursuance of the act appealed from shall cease until the appeal shall be determined.

324.07 Judgment on appeal to circuit court. The circuit court may reverse or affirm in whole or in part the act of the county court appealed from, and may render a proper judgment or make such order therein as the county court ought to have made, and may remit the case for further proceeding in pursuance of the opinion of the circuit court, or may make any order, or take any action therein, to enforce its own judgment, as it may deem best. If the case is appealed to the supreme court it may remit the same to the county court, when no further proceedings are required in the circuit court.

324.08 Dismissal of appeal. If the appellant fails to prosecute his appeal to the circuit court with reasonable diligence the court, on motion, shall dismiss the appeal or affirm the judgment or order appealed from, as such court shall deem just.

[324.09, 324.10 Stats. 1931 repealed by 1933 c. 190]

324.11 Costs, when allowed; judgment for. Costs may be allowed in all appealable contested matters in county court, excepting in jury trials, to the prevailing party, to be paid by the losing party or out of the estate as justice may require; and when costs are allowed they shall be taxed by the judge at the rates allowed in circuit court and upon like notice; but the attorney fees shall not exceed twenty-five dollars, and shall be allowed only when an attorney appears for the prevailing party. When costs are allowed, the court shall render judgment therefor, stating in whose favor and against whom the same is rendered and the amount thereof; and a list of the items making such amount shall be filed with the papers in the case.

324.12 Costs in will contests. Costs shall not be awarded to an unsuccessful contestant of a will unless he is a special guardian appointed by the county or circuit judge, or is named as an executor in a paper propounded by him in good faith as the last will of the decedent.

324.13 Attorney's fees, will contests. (1) In a contest upon the probate of any will, or in relation to any trust created therein, or for the allowance of any account required of an executor or trustee, the court may, if the contest is necessary or meritorious, allow to the proponent of such will and to the successful contestant in such proceedings a reasonable attorney's fee to be paid out of the estate of the decedent; and the court may allow to the proponent if successful on his appeal or to such contestant if finally successful on appeal a reasonable attorney's fee for services on such appeal to be paid out of said estate.

(2) A guardian ad litem for a necessary party to a proceeding to probate a will, or in a proceeding to construe a will, or in a proceeding in the settlement of an estate, may be allowed compensation and his necessary expenditures, to be fixed by the court, and paid out of the estate or property in controversy.

324.14 Security and judgment for costs. In all cases mentioned in section 324.11 the county court may require the claimant or contestant to give a bond in such sum and with such surety as shall be approved by the court, to the effect that he will pay all costs that may be awarded by such court in such proceeding against him. A judgment for costs shall be against the claimant or contestant and the surety.

324.15 Judgment, how enforced; execution; lien. (1) All money judgments in favor of an estate shall have the same force and effect as judgments in the circuit court,

and may be enforced by execution. The pertinent provisions of chapter 272, relating to executions, shall apply to such executions except as otherwise provided in this section.

(2) Any such judgment for more than ten dollars may be docketed in the circuit court as circuit court judgments are docketed, upon filing therein a certified transcript of such judgment. Such judgment when so docketed shall be a lien upon the real estate of the debtor in the same manner and for the same length of time as judgments rendered and docketed in the circuit court. When execution shall issue from the county court upon such judgment, in case the same has been docketed as aforesaid, it shall recite the time of docketing.

324.16 Writs of error. Writs of error to obtain a review by the supreme court of proceedings of the county court, in counties having a population of over fifteen thousand, shall be allowed, and taken in accordance with the provisions of chapter 274, relating to writs of error.

324.17 Jury trials, practice. (1) This section applies only to counties which have over fifteen thousand population. Jury trials may be had in county court in all appealable cases in which a jury trial may be had of similar issues in circuit courts.

(2) In all cases provided in subsection (1), any person having the right of appeal from the determination of the court, may file with the court, within ten days after notice that the matter is to be contested, a written demand for a jury trial, and deposit ten dollars with the county treasurer, take his receipt therefor and file it with the court. If such issue is transferred for trial to the circuit court, as provided in this section, the judge of the county court may order said deposit refunded to the depositor, and the county treasurer upon presentation of such order shall refund said amount.

(3) Upon filing such 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 for the next jury term of the court. The county court may transfer the matter or cause, and the record thereof, to the circuit court of such county for trial.

(4) Three jury terms of the county court shall be held each year (if there are jury cases ready for trial at such times), commencing respectively on the second Tuesday in January, April and October.

(5) Jurors and trial juries shall be drawn in the manner provided by sections 255.04 to 255.09, except as otherwise provided herein, and trials by jury shall be in the manner provided by sections 270.15 to 270.31; but in county courts having civil jurisdiction jurors and juries may be drawn in probate matters and jury terms had in the manner and according to the regulations required in civil cases in such courts.

(6) Not more than ten days prior to each jury term the clerk shall prepare, in the order of their date of issue, a list of cases in which a trial by jury shall have been demanded, and such list shall constitute the jury calendar for such term of the county court. Unless the court shall otherwise order, every case on such calendar which shall not be disposed of at said term shall stand continued to the next jury term, and be placed on the jury calendar for such term. If the party who demanded the jury trial shall ask to have such action continued for the term, after the commencement of the term at which such action is for trial, such continuance shall be granted only upon payment of ten dollars motion fees unless such party shall waive a jury trial in such proceeding. In case a continuance in any action upon the jury calendar is asked by any other party, the court may grant such continuance and require payment of ten dollars motion fees in its discretion.

(7) In all jury cases costs shall be allowed as a matter of course to the prevailing party, the items and taxation of which shall be as in circuit court.

(8) Any party to the controversy may within ten 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 such demand for transfer, the judge of the county court shall immediately cause the record and proceedings in the matter to be certified to the circuit court, and the same shall there be tried and determined as a circuit court action. And in case the matter is one where the county court has the right to fix the fees or compensation of the attorneys, executors, administrators or guardians, the circuit court may determine such fees or compensation. The circuit court may render such judgment as may be proper, or make such order therein as the county court ought to have made and may remit the case to the county court for further proceedings, or make any order or take any action therein to enforce its own judgment as the circuit court may deem best. The county court, after such cause is remitted, shall proceed therein in accordance with the determination of the circuit court.

[324.18 Stats. 1931 renumbered section 324.04 (4) by 1933 c. 190 s. 99]

324.18 Notice in county court; mode of service; proof of service. (1) **MODE OF SERVICE.** When notice is required to be given in compliance with the provisions of this section, the notice shall be given either by service thereof upon all persons interested (whether within or without the state) at least ten days before the hearing or proceeding in the manner in which a circuit court summons is required to be served, other than by publication; or by publication of the notice as provided by section 324.20. When service is by publication the court may order a copy of the notice mailed to every interested person whose post-office address is known or can with due diligence be ascertained, at least twenty days before the hearing or proceeding. The court may order both service by publication and personal service or service by mail on designated persons.

(2) **WAIVER OF NOTICE.** Persons who are sui juris, and duly appointed and qualified guardians ad litem in behalf of themselves and those for whom they are acting, may in writing waive the service of notice upon them and consent to the hearing of any matter without notice except that a guardian ad litem shall not waive the notice for a petition to prove a will or the petition for administration.

(3) **EFFECT OF APPEARANCE.** A general appearance by a competent adult person is equivalent to timely personal service of notice upon him.

(4) **WHO MAY SERVE NOTICE.** The notice may be served by any person not a party.

(5) **PROOF OF SERVICE.** Proof of the service of the notice shall be as follows:

(a) By the affidavit of the person who made the service, or if by the sheriff, by his certificate, showing the place and the time of the service, and that he knew the person served to be the person for whom the notice was intended and that he delivered to and left with him a copy; if the person was not personally served such affidavit or certificate shall say when, where and with whom the copy was left.

(b) By the written admission of the person served if he be competent and an adult. The subscription of his name to such admission shall be presumptive evidence of its genuineness.

(c) In case of publication, by the affidavit of the publisher or printer or his foreman or principal clerk showing the notice and specifying the date of the first and of the last publication; and the affidavit of the person who mailed the notice showing when and to whom he mailed it.

324.19 Notice, when fixed by court order. When notice of any proceedings in county court is required by law or deemed necessary by the court and the manner of giving the same shall not be directed by any law the court shall order notice to be given to all persons interested in such manner and for such length of time as it shall deem reasonable.

324.20 Publication of notices. (1) All county court notices required to be given by publication shall be printed once a week for three successive weeks (unless a different length of publication is expressly required by law) in such newspaper, published in the county, as the court shall by order direct; such notices shall be printed in the English language, but may be published in a newspaper printed in any other language, if in the opinion of the court, it shall be more likely to give notice to the interested persons. If no newspaper is published in such county, the publication shall be in such newspaper published in this state as the court shall order; notices published under section 316.18 shall be in a newspaper published in the county where the land is situated, and if there be none so published, then in such newspaper as the court shall direct. No county judge or register in probate shall order the publication of any such notice in any newspaper controlled by him or in which he has any pecuniary interest, if there be any other newspaper published in his county.

(2) Any county judge, register in probate or other officer of any court, who shall neglect or refuse to carry out or violate any provisions of this section, shall forfeit not less than fifty dollars for each such neglect, refusal or violation.

Cross Reference: Orders signed by register in probate, see 253.27.

324.21 Records, how amended. Any county court may amend, correct and perfect its record of any matter transacted therein in such manner as may be necessary to make the same conform to the truth.

324.22 Correction of court records; notice of hearing. (1) Upon verified application to a county court by any person interested, praying that its records be amended, corrected or perfected, as specified in the application, the court shall order a hearing thereon and notice of the hearing shall be given as provided in section 324.18.

(2) If the error in the court record is obvious or is purely clerical, the court may hear the application and correct the error without notice, or upon such notice as the court may direct.

324.23 Hearing; amendment, effect. If on such hearing the court shall find its record incorrect, incomplete or imperfect it shall make it conform to the truth. Such amended, corrected and perfected record shall be as valid and binding as though correctly made and entered at the proper time.

324.24 Hearings set for term; calendar, how disposed of. (1) All matters in county court requiring notice of hearing shall be made returnable and set for hearing at a term of court. All such matters by brief titles shall be entered in a book called the court calendar.

(2) Uncontested matters shall be first disposed of in their order on such calendar, followed by the disposition of contested matters in like manner, unless the court shall otherwise direct.

324.25 Citation. An order to account or to appear in the county court shall state explicitly what the party cited is required to do, and shall be served in the manner provided for service of summons in circuit court.

324.26 Forms of notices. In all matters and proceedings in any county court where in such court shall order notice to be given to parties interested therein of the time and place of the hearing thereof, by publication or otherwise, it shall not be necessary to publish in full or to serve a complete copy of such order; but a notice containing a brief statement of the matter to be heard, sufficient to fairly inform those interested of the nature of the proposed proceeding and the estate involved, with the residence or late residence of the owner of such estate, and stating the time and place of such hearing shall be sufficient, and any number of different matters may be included in the same notice, and such notice may be substantially as follows:

STATE OF WISCONSIN, }
County Court for County. } In Probate.

Notice is hereby given that at the term of the county court to be held in and for said county at the courthouse in the (city, village or town) of, in said county, on the first Tuesday of, A. D. 19. . ., the following matters will be heard and considered:

The application of A. B. for the appointment of an administrator of the estate of C. D., late of the (city, village or town) of, in said county, deceased.

The application of A. B. to admit to probate the last will and testament of C. D., late of the (city, village or town) of, in said county, deceased.

The application of A. B. for the appointment of a guardian of the person and estate of C. D., an insane person of the (city, village or town) of, in said county.

The application of A. B., administrator of the estate of C. D., late of the (city, village or town) of, in said county, deceased, to sell a piece of real estate belonging to such estate, described as follows (here describe particularly), in said county.

By order of the court.

E. F., Judge.

Dated.

324.27 County court fees. Fees in the county court shall be allowed:

- (1) To appraisers, an amount to be fixed by the court in its discretion;
- (2) To commissioners to make partitions, or to assign dower or homestead against deceased persons, three dollars per day;
- (3) In all cases, travel, four cents per mile each way;
- (4) To jurors, interpreters and witnesses the same fees as provided in circuit court;
- (5) In cases not provided for, a reasonable compensation shall be allowed by the court.

[324.28 Stats. 1931 repealed by Supreme Court Order, effective Jan. 1, 1934]

324.29 Appearances, how made. (1) **IN PERSON OR BY ATTORNEY.** Every person not under disability may appear in any proceeding in county court or before any county judge and conduct or defend the same in person or by attorney and not otherwise. Every person under disability shall appear and conduct or defend by his guardian ad litem, who shall be an attorney, or by his general guardian who may appear by attorney. The county judge shall make an entry in his minutes of every appearance stating when, how and by whom it was made, and shall not proceed further in the cause, matter or proceeding until such entry is made.

(2) **GUARDIANS AD LITEM.** When it shall be necessary to appoint a guardian ad litem for any person under disability, the court may appoint such guardian at the time of making the order for hearing the matter, and require notice thereof and of such hearing to be served upon such guardian; or such guardian may be appointed on the day of the hearing, and before any proceedings are had. The guardian ad litem shall continue to act throughout the proceeding in relation to the same estate or matter, until its final settle-

ment or conclusion, unless otherwise ordered. In the discretion of the court, the appointment may be revoked and another guardian ad litem appointed.

(3) **ATTORNEYS.** No attorney shall appear, or be appointed as guardian ad litem, for different persons in the same matter or proceedings, whose interests and rights in relation to such matter or proceeding shall be conflicting. The attorney who shall first appear for any party shall be recognized as his attorney throughout the matter or proceeding, unless another is substituted with his consent in writing, or for good cause shown upon application to the court, and after notice to such attorney, if residing in the state and his residence is known, and by order of the county court.

(4) **PERSONS IN MILITARY SERVICE.** At the time of making the order for the hearing of any matter in county court, the moving party shall make and file an affidavit setting forth the facts showing whether or not any of the parties interested in such matter are actively engaged in the military service of the United States. Whenever it shall appear by such affidavit or otherwise that any person in the active military service of the United States is interested in any proceeding pending in county court and is not represented by an attorney the judge shall appoint an attorney to represent such person and protect his interest and no further proceedings shall be had until such appointment has been made. An attorney appointed by the court to represent any person in the military service in any proceeding in the probate of an estate may be allowed compensation and his necessary expenditures to be fixed by the court, and paid out of the estate.

324.30 Papers; filing; withdrawal. All papers in any matter shall be fairly and legibly written on substantial paper and have indorsed thereon the title of the proceeding in which they are filed, and the character of the paper; and if not so written and indorsed, the judge may refuse to receive and file the same. He shall indorse all papers with the dates of their delivery to him. No paper filed in any matter shall be withdrawn without leave of the court or judge, and when a paper is withdrawn a copy thereof, attested by the judge, shall, if required, be left in its place.

[324.31 to 324.34 Stats. 1931 renumbered section 253.33 by 1933 c. 190 s. 100]

324.35 Removal of executor, administrator, guardian, trustee. If an executor, administrator, guardian or trustee shall reside out of this state, or shall neglect to render his account within the time provided by law or the order of the court, or shall neglect to settle the estate according to law, or to perform any judgment or order of the court, or shall abscond, or become insane or otherwise incapable or unsuitable to discharge the trust, the county court may remove such executor, administrator, guardian or trustee and appoint a successor therefor; but no such order shall be made until the person affected has been notified, as provided by sections 310.21 or 324.19, to show cause at a specified time why he should not be removed.

324.351 Accounts; failure of fiduciaries to file. If any executor, administrator, guardian or trustee shall fail to file his account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue a citation directed to the sheriff ordering and directing the executor, administrator, guardian or trustee to show cause before the court why he should not immediately make and file his reports or accounts. Should any executor, administrator, guardian or trustee fail, neglect, or refuse to make and file any report or account after having been cited by the court so to do, or if he fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the executor, administrator, guardian or trustee be brought before the court to show cause why he should not be punished for contempt for such failure, refusal, or neglect. If the court finds that such failure, refusal or neglect is wilful or inexcusable, the executor, administrator, guardian or trustee may be punished for contempt by a fine not to exceed \$50 or by imprisonment not to exceed 10 days, or both.

324.36 Delayed service of notice. (1) In case the county court fails, because of insufficient notice, to acquire jurisdiction of the subject matter or of a person who is a necessary party in any proceeding, the court may at any time order service of the proper notice and may require the person to show cause why he should not be bound by the action already taken in the proceeding as though he had been seasonably notified. This provision for delayed notice applies to minors and incompetents. The notice may be served in the regular manner or as the court directs.

(2) Such person may appear and defend and the procedure shall be the same as to him and he shall have the same remedies and relief he would have been entitled to had he been seasonably served with notice. The court may amend any order or judgment to make it conform to the changed conditions resulting from the delayed notice and proceedings thereon.