

TITLE XXVIIA.

Procedure in County Court in Small Claims
Type Actions.

CHAPTER 299.

PROCEDURE IN COUNTY COURT IN SMALL CLAIMS TYPE ACTIONS.

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299.01 Applicability of chapter. Subject to the limitations of ss. 299.11, 299.12 and 299.13, the procedure in this chapter shall be used in county court in the following actions:

- (1) UNLAWFUL DETAINERS. Unlawful detainer actions under ch. 291;
- (2) FORFEITURES. Actions to recover forfeitures except as a different procedure is prescribed in chs. 66, 288 and 345, or elsewhere, and such different procedures shall apply equally to the state, a county or a municipality regardless of any limitation contained therein;
- (3) REPLEVINS. Actions for replevin under ch. 265 where the value of the property claimed does not exceed \$500.
- (4) OTHER CIVIL ACTIONS. Other civil actions where the amount claimed is \$500 or less, provided that such actions or proceedings are:
 - (a) For money judgments only except for cognovit judgments which shall be taken pursuant to s. 270.69; or
 - (b) For attachment or garnishment under chs. 266 and 267, except that ss. 266.09 and 267.01 (2) shall not apply to proceedings under this chapter, and s. 267.17 shall apply only to third persons who come within the limitations of s. 299.12 (1) (a) 2 or 3; or
 - (c) To enforce a lien upon personalty; or
 - (d) To recover a tax.

History: 1961 c. 519, 614, 684; Sup. Ct. Order, 14 W (2d) vii; 1965 c. 507 s. 5.
Cognovit judgment must be taken by procedure in Ch. 299. Secs. 59.42, 271.04 and circuit or county court procedure in accordance with 270.69 rather than small claims procedure in Ch. 299. Secs. 59.42, 271.04 and 271.21, regarding fees and costs are applicable. 52 Atty. Gen. 60.

299.02 Counterclaims for over \$500. The limitations of s. 299.01 shall apply to counterclaims and cross complaints.

History: 1961 c. 519.

299.03 Intent. Sections 299.01 and 299.02 are procedural and not jurisdictional. Unless otherwise designated wherever the word "court" is used herein it means county court.

History: 1961 c. 519, 618.

299.04 Relation of this chapter to other procedural rules. (1) GENERAL. Except

as otherwise provided in this chapter, the general rules of practice and procedure in Title XXIV and Title XXV shall apply to actions and proceedings under this chapter.

(2) FORMS. Except as otherwise provided in this chapter, or where inconsistent with the provisions of ch. 291, the forms specified in Title XXV shall be used.

History: 1961 c. 519.

299.05 Summons. (1) CONTENTS. The summons shall state the nature of the demand substantially in the terms of one or more of the provisions of s. 299.01, and the dollar amount of damages, if any, the last known address of the parties and the name and address of plaintiff's attorney, if any.

(2) SIGNING. The process shall be signed by the clerk or by any attorney duly authorized to practice law in this state and shall be issued by the clerk only to an individual acting in his own behalf and appearing in his own proper person, or to attorneys, and not otherwise.

(3) RETURN DATE. Every summons shall specify a return date and time. The return date shall be not less than 8 days nor more than 17 days from the issue date, and service shall be made not less than 8 days prior to the return date. The clerk shall set the day and hour at which the summons is returnable.

(4) CLERK TO FURNISH TIME OF RETURN. If a summons is signed by an attorney, he shall obtain from the clerk of court the hour and date within the limits of sub. (3) on which to make the summons returnable.

(5) NOTING DATE OF MAILING. After a copy of the summons has been mailed, the clerk shall note the date of mailing on the original.

(6) FORM. The summons shall be substantially in the following form:

State of Wisconsin, County Court County.
A.B., Plaintiff
v.
C.D., Defendant

SUMMONS (Small Claims)

THE STATE OF WISCONSIN, To said defendant:

You are hereby summoned to appear and plead to the plaintiff's complaint in the above court at . . . in the (city) (village) of . . . , on the . . . day of . . . , A.D., 19. . , at . . . o'clock (A.M.) (P.M.). [A copy of the complaint is hereto attached.] [The plaintiff will state his demand on that date.] In case of your failure to appear and to plead, a judgment may be rendered against you in accordance with the demands made by the plaintiff. The nature of the demand being made upon you is

(state in terms of s. 299.01)

and the amount of damages, if any, demanded is \$

Dated: . . . , 19. . .

Plaintiff's P.O. Address:

E.F.

.

Clerk of County Court

Plaintiff's Attorney (if any): . . .

[or]

G.H.

.

Plaintiff's Attorney

(Name)

(P.O. Address)

Defendant's P.O. Address:

.

History: 1961 c. 519, 643.

Small claims practice discussed. Boden, 47 MLR 33.

299.06 Actions; how commenced, pleadings, appearances. (1) PLEADINGS. Pleadings may be oral or written and need not be verified under s. 263.24 unless verification is expressly required by another statute. Any county court may by order or rule require written pleadings in a particular or all cases, and may require by order or rule that the same be verified.

(2) (a) An individual may commence an action either in his own proper person and in his own behalf, or by an attorney regularly authorized to practice in the circuit courts

of this state, but not otherwise. Actions on behalf of any other party shall be commenced only by attorneys regularly authorized to practice in the circuit courts of this state.

(b) Any party to any action or proceeding before said court may appear and prosecute the same in his own proper person or by an attorney regularly authorized to practice in the circuit courts of this state but not otherwise.

History: 1961 c. 519, 618.

299.07 File of summons; forfeiture tickets; warrants. The clerk shall keep a file of summons issued by him, of forfeiture tickets filed with him, and of warrants for arrests issued by him.

History: 1961 c. 519.

299.08 Clerk's fee. At the time of issuance of every summons or other process in a proceeding not commenced by a summons, the plaintiff shall pay to the clerk of said court, a clerk's fee of \$2 and a suit tax of \$1 as prescribed by s. 271.21, except that a municipality need not advance these fees, but shall be exempt from payment of such fees until the defendant pays costs pursuant to s. 299.25.

History: 1961 c. 643; 1963 c. 37.

299.10 Case file, case docket. (1) **CLERK TO MAINTAIN DOCKET AND CASE FILE.** The clerk shall maintain a docket of small claims cases under this chapter, which docket may be in loose leaf or card form, and a case file for each case in which there are papers other than the ones listed in s. 299.07 to be filed.

(2) **ENTRIES; WHAT TO CONTAIN.** Entries in the docket shall include:

(a) The number of the case;

(b) The title of every action including the full names of the parties and their addresses, if known. If service is by mail, the clerk shall also enter the date when the summons is mailed to any defendant, and the name of the person to whom mailed;

(c) The names of attorneys, if any, appearing in the action;

(d) Type of action by reference to s. 299.01;

(e) Nature of plea in forfeiture actions;

(f) The judgment or final order entered, date of entering it and the amount of forfeiture or damages, costs and fees due to each person separately;

(g) Satisfaction of forfeiture, or commitment for nonpayment of forfeiture or judgment;

(h) The date of mailing notice of entry of judgment or final order as provided in s. 299.24;

(i) Such additional entries as may be necessary to supply essential information not contained in the case file or reporter's record.

(3) **CORRECTING DOCKET.** The judge has power at any time to order the docket corrected or any omission or additional entry supplied if he is satisfied that an error or omission exists, or that one or more additional entries are needed.

(4) **TIME OF DOCKET ENTRIES.** Entries in the docket shall be made not later than the time of the entry of the judgment or final order, or as soon thereafter as possible. No docket entries need be made in uncontested cases where the action is for a money forfeiture charging violation of a parking regulation.

History: 1961 c. 519.

299.11 Territorial limitation on service in personal actions. Service of process by mail in actions under this chapter to obtain a judgment against a party personally shall be limited to the territorial limits of the county. In matters involving \$200 or more personal service of process to obtain a personal judgment may be made outside the county but within the state. Section 345.09 shall not apply to actions under this chapter.

History: 1961 c. 519.

299.12 Limitation on personal jurisdiction. (1) **SERVICE BY MAIL.** Jurisdiction over a person served pursuant to s. 299.13 (1) may be obtained only under the following circumstances:

(a) *Defendant's location or place of operation.* When the defendant at the time the action is commenced:

1. Is a natural person present within the county when served; or

2. Is a natural person having his usual place of abode within the county; or

3. Is a corporation or an unincorporated association or a member of a partnership engaged in substantial business activities within the county.

(b) *Motor vehicle, action arising out of the use of.* When the action regardless of defendant's domicile arises out of the use or operation of a motor vehicle in the county.

(2) **PERSONAL SERVICE.** Jurisdiction over a person served pursuant to s. 299.13 (2) may be obtained:

(a) *In matters involving \$200 or less.* When the defendant at the time the summons is served:

1. Is a natural person present within the county when served; or
2. Is a natural person having his usual place of abode within the county; or
3. Is a corporation or an unincorporated association or a member of a partnership engaged in substantial business activities within the county.

(b) *In matters involving over \$200.* When the defendant at the time the summons is served:

1. Is a natural person present within the state when served; or
2. Is a natural person having his usual abode within the state; or
3. Is a corporation or an unincorporated association or member of a partnership engaged in substantial business activities within the state.

History: 1961 c. 519.

Small claims practice discussed. *Boden*, 47 MLR 38.

299.13 Personal jurisdiction; service. The summons shall be served as to any defendant in either of the following ways:

(1) **MAILING.** By mailing in the manner following: Service by mail may be made by leaving the original and necessary copies with the clerk of court, together with 50 cents for each defendant to cover the expense of mailing, except that a municipality need not advance the mailing fee, but shall be exempt from payment of such fee until the defendant pays costs pursuant to s. 299.25. The court may by rule require the use of registered mail with return receipt requested, in which event the fee prescribed shall be \$1.50 for each defendant. The clerk shall mail a copy to each defendant at his last known address as specified in the summons. Service of the summons is considered completed when it is mailed, unless the envelope enclosing the summons has been returned unopened to the clerk prior to the return date. All mailing of summonses shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address.

(2) **PERSONAL SERVICE.** By service upon the defendant within the state as follows:

(a) In any manner authorized in s. 262.06 (1) (a) or (b), or (2), except that there shall be no service by publication.

(b) Upon a domestic or foreign corporation by personally serving the summons upon an officer, director or agent of the corporation within the state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or agent, which is located in the state, with the person who is apparently in charge of the office.

(c) Upon partnership by serving a summons individually upon each general partner in the state known to the plaintiff, in any manner prescribed in s. 262.06 (1) (a) or (b) or (2), except that there shall be no service by publication. A judgment rendered after such service is a binding adjudication against the partnership as to its assets anywhere.

(d) Upon an unincorporated association (other than a partnership) by serving a summons individually upon any officer or director in the state known to the plaintiff, in any manner prescribed in s. 262.06 (1) (a) or (b) or (2), except that there shall be no service by publication. A judgment rendered after such service is a binding adjudication against the association as to its assets anywhere.

(3) **COURT RULING.** Any county court may by rule require that service of the summons be made as prescribed in sub. (2).

History: 1961 c. 519, 618, 643.

299.14 Failure of actual notice of suit by mail. (1) **PETITION; HEARING; TRIAL ON MERITS.** In any action, where service of summons is made by mailing, a defendant, at any time within 15 days of receiving actual knowledge of the pendency of the action or of the entry of judgment therein against him (if judgment has been entered), may, by written verified petition, on forms provided by the court, petition to set aside the judgment if one has been entered and for an opportunity to be heard upon the merits. Thereupon the court shall set the matter for hearing at a time that will give the parties reasonable opportunity to appear and, if judgment has been entered, shall stay all proceedings on the judgment. At the time of the hearing the questions raised by the petition shall first be heard and determined by the court. If the court grants the petition, the court shall proceed to try the matter upon the merits, or, if judgment has been entered, shall vacate the judgment and proceed to try the matter upon the merits. If the court denies the petition, it shall, if judgment has been entered, revoke its order staying proceedings thereon or, if a judgment has not been entered, it may, in its discretion, give the defendant opportunity to be heard upon the merits.

(2) EFFECT OF ACTUAL APPEARANCE. This section shall not apply to a defendant who actually appeared and submitted to the jurisdiction of the court without filing application as provided in sub. (1).

History: 1961 c. 519.

299.16 Actions in rem or quasi in rem; limitation on judgment. (1) BASIS. In proceedings in rem or quasi in rem no judgment shall be entered against a defendant for an amount in excess of the value of the res unless based on service as provided in s. 299.13 (2), or unless the defendant makes a general appearance.

(2) ADJOURNMENT AND PUBLICATION. When the defendant has not been served pursuant to s. 299.13 (2) and does not make a general appearance and the court has jurisdiction over the res, service may be made on the defendant by publication. If service is to be made by publication, the proceeding shall be adjourned to a day certain by the court, and a notice in substantial conformity with sub. (3) shall be published as a class 3 notice, under ch. 985.

(3) FORMS. (a) Notice in attachment and garnishment.

STATE OF WISCONSIN COUNTY COURT COUNTY TO:

You are hereby notified that (an attachment) (a garnishment) has been issued against you and your property (attached) (garnished) to satisfy the demand of amounting to \$

Now, unless you shall appear in the county court, of County, located in the courthouse in the city of, before the Hon., a judge of said court, or before any judge of said court to whom the said action may be assigned for trial according to the law on the day of, A.D., 19.., at o'clock in thenoon, judgment will be rendered against you and your property sold or applied to pay the debt as provided by law.

Dated this day of, 19..

. . . . Plaintiff By Plaintiff's Attorney

(b) Notice in replevin.

STATE OF WISCONSIN COUNTY COURT COUNTY TO:

You are hereby notified that a replevin action has been issued to recover the possession of the following described goods and chattels, to wit: of which I, the plaintiff, am entitled to possess, but which you have (unjustly taken) (unlawfully detained) from me.

Now, unless you shall appear in the county court, of County, located in the courthouse in the city of, before the Hon., a judge of said court, or before any judge of said court to whom the said action may be assigned for trial according to the law, on the day of, A.D., 19.., at o'clock in thenoon, judgment will be rendered against you for the delivery of said property to me and for damages for the (taking and) detention thereof and for costs.

Dated this day of, 19..

. . . . Plaintiff By Plaintiff's Attorney

History: 1961 c. 519, 643; 1963 c. 37; 1965 c. 252.

299.20 Answer; counterclaim and cross complaint. (1) PLEADING ON RETURN DATE OR ADJOURNED DATE. On the return date of the summons or any adjourned date thereof the defendant may answer, demur or otherwise plead to the complaint.

(2) CROSS COMPLAINT. In the case of more than one defendant, any cross complaint by one defendant against another who has appeared shall be made or filed on the return date or any adjourned date.

(3) IMPLEADER, PROCEDURE WHEN GRANTED. If the court grants a motion to implead a third party, from that time the entire action may be tried by circuit court procedure.

History: 1961 c. 519; 1963 c. 343.

299.205 Affidavit of prejudice. On the return date of the summons or at least 2 weeks prior to the trial date, upon the filing by any party of an affidavit that he has

good reason to, and does, believe that he cannot have a fair trial on account of the prejudice of the judge, naming him and motion thereon, the judge shall thereupon be disqualified to act in relation to that matter. The time for filing such affidavit and making such motion may be extended for cause but not more than 10 days. In a county having more than 3 branches such affidavit may name 2 judges. The case shall then be referred to the clerk who, in courts containing 3 or more branches, shall request a judge from another branch of that court to attend and hold court in such matter. In single or 2 branch courts, or if no other judge is able to serve, the clerk shall request the chief justice of the supreme court, pursuant to s. 251.182, to designate and assign another judge to attend and hold court in such matter.

History: 1961 c. 519; 1963 c. 407.

299.21 Trial. (1) **DETERMINATION OF METHOD OF TRIAL.** On the return date or at least 5 days prior to trial either party may file a written demand for trial by jury. The court shall determine whether, in a case triable by jury, either party demands a trial by a jury of 6, or by a jury of 12. In the absence of such demand trial shall be to the court.

(2) **TRIAL BY COURT.** If the parties agree to trial by the court, the case may, with the consent of all the parties, be tried on the return day.

(3) **12-MAN JURY TRIAL; FEES AND SUIT TAX; PLACEMENT ON CALENDAR OR TRANSFER.** If either party demands a trial by jury of 12, the additional clerk's fee provided in s. 59.42(2) and a jury fee of \$24 and the \$5 suit tax shall be paid immediately by the demanding party, and upon payment of the same the court shall place the case on the 12-man jury trial calendar of the county court, or shall forthwith transfer the case to circuit court for trial.

(4) **12-MAN JURY; PROCEDURE; COMPLAINT.** After such placement or transfer for trial by a 12-man jury, the parties shall proceed as if the action had originally been begun as a proceeding under Title XXV; the plaintiff shall when no complaint has been previously served and filed, accordingly, file and serve a written complaint within 20 days of the date of the order for placement or transfer.

(5) **12-MAN JURY WAIVED IF NOT DEMANDED.** If neither party demands a trial by a jury of 12, the right to trial by a jury of 12 is waived forever.

(6) **6-MAN JURY WAIVED IF NOT DEMANDED.** If either party demands a trial by a jury of 6 and there is no demand for a trial by a jury of 12, the demanding party shall pay a jury fee of \$12 immediately, the jury shall be selected as provided in s. 957.054 (1) and (2) and the trial shall proceed in the same manner as jury trials under Title XXV. If, subsequent to the payment of a jury fee under this subsection by a defendant charged with a violation of a county ordinance, no jury is impaneled in the action, the court may order the refund of the jury fee to the defendant.

(7) **POPULOUS COUNTIES.** In counties having a population of 500,000 or more all juries shall be drawn from the circuit court jury panel regardless of a juryman's residence.

History: 1961 c. 519, 618, 643; 1965 c. 390.

299.215 Trial by court, findings and judgment. Upon a trial of an issue of fact by the court, its decision shall be given either orally immediately following trial or in writing and filed with the clerk within 60 days after submission of the cause, and shall state separately the facts found and the conclusions of law thereon; and judgment shall be entered accordingly.

History: 1963 c. 37.

299.22 Judgment on failure to appear or answer. (1) **WHEN PLAINTIFF FAILS TO APPEAR.** If the plaintiff fails to appear and plead on the return date or on the date set for trial, the court may enter a judgment for the defendant dismissing the action, on motion of the defendant or on its own motion.

(2) **WHEN DEFENDANT FAILS TO APPEAR.** If the defendant fails to appear and plead on the return date or on the date set for trial, the court may enter a judgment upon due proof of facts which show the plaintiff entitled thereto.

(3) **PLAINTIFF'S PROOF WHERE ACTION AROSE ON CONTRACT FOR RECOVERY OF MONEY.** In any action arising on contract for the recovery of money only, if the defendant fails to appear and answer or to appear at the time set for trial, the plaintiff may file with the judge or clerk a verified complaint, or an affidavit of the facts, or may offer sworn testimony or other evidence to the clerk or judge, and either may enter judgment thereon.

History: 1961 c. 519.

299.225 Dismissal of pending actions. The court may without notice dismiss any

action or proceeding, in which issue has not been joined, which is not otherwise disposed by judgment or stipulation and order within 6 months from the original return date.

History: 1963 c. 37.

299.23 Reporter. The testimony in the trial of any contested action shall be taken by a phonographic reporter or other court approved method. In all other matters proceedings shall be reported as the court directs.

History: 1961 c. 519.

299.24 Judgment. (1) **ENTRY OF JUDGMENT OR ORDER; NOTICE OF ENTRY THEREOF.** When a judgment or an order is rendered, the judge or clerk shall immediately enter it in the case docket and note the date thereof which shall be the date of entry of judgment or order. The clerk, except in municipal and county forfeiture actions, shall mail a notice of entry of judgment to the parties or their attorneys at their last known address within 3 days of its entry. Any such judgment shall be a docketed judgment for all purposes upon payment of a fee of 50 cents to the clerk. The clerk shall enter such docketed judgment in an appropriate judgment docket book.

(2) **APPLICABILITY OF 270.79.** Section 270.79 shall apply with respect to docketed judgments.

History: 1961 c. 519, 618; Sup. Ct. Order, 14 W (2d) vii; 1963 c. 407.

Discussion of statutes governing the docketing in county courts. 52 Atty. Gen. 157. docketing of small claims judgments ren-

299.25 Costs. The clerk shall without notice to the parties tax and insert in the judgment as costs in favor of the party recovering judgment the following:

(1) **SUIT TAX.** Any suit tax paid.

(2) **CLERK'S FEE.** Any clerk's fee paid.

(3) **MAILING FEE.** A mailing fee of 50 cents or \$1.50 as provided in s. 299.13 (1), if paid.

(4) **RETURN OF CASE FILE.** A fee of 50 cents for returning the case file and transcript or statement as specified in s. 59.42 (9) (b), if paid.

(5) **GARNISHEE FEE.** Any garnishee fee paid.

(6) **SERVICE FEES.** Lawful fees or charges paid to the sheriff, constable or other person for serving the summons or any other document.

(7) **WITNESS FEES.** Amounts necessarily paid out for witness fees, including travel, as prescribed in s. 885.05 with respect to circuit court procedure. The fees for witnesses and their travel shall not exceed 50% of the amount recovered unless an order is entered specifying the amount to be paid in excess of 50% and the reasons therefor.

(8) **6-MAN JURY FEE.** A \$12 fee for a 6-man jury if demanded under s. 299.21 (6).

(9) **12-MAN JURY FEE.** A \$24 fee for a 12-man jury if demanded under s. 299.21 (3).

(10) **ATTORNEY'S FEES.** Attorney's fees except when the amount thereof is otherwise specially provided for:

(a) On a judgment for \$50 or less, there shall be no attorney's fees; on a judgment for more than \$50 and less than \$100, \$5; on a judgment for \$100 and less than \$200, \$10; on a judgment for \$200 and not more than \$500, \$25.

(b) In an action of replevin and attachment the value of the property recovered shall govern the amount of the attorney's fees taxable. In an action of unlawful detainer the attorney's fees taxable shall be fixed by the court.

(c) If judgment is for the defendant, the amount claimed in the complaint, the value of the property sought to be recovered or the amount recovered on the defendant's counterclaim, in the court's discretion, shall govern the amount of the attorney's fees that the defendant shall recover, and he shall not be entitled to recover for cost items he has not advanced.

(d) No attorney's fees shall be taxed in behalf of any party unless he appear by an attorney.

(11) **ADDITIONAL COSTS.** Additional costs as may be allowed to a municipality under ss. 66.12 (3) (a) and 288.195 (2).

(12) **SECURITY FOR COSTS.** When security for costs shall be ordered pursuant to s. 271.28, the maximum amount allowed shall be \$50.

(13) **ADDITIONAL COSTS AND DISBURSEMENTS.** The court may permit additional costs and disbursements to be taxed pursuant to ch. 271.

History: 1961 c. 519, 643.

299.255 Small claims fees. The clerk shall collect the following fees in actions and proceedings under this chapter:

(1) EXECUTIONS; WRIT OF RESTITUTION. For issuing an execution or writ of restitution, 50 cents.

(2) TRANSCRIPTS. For issuing or docketing a transcript, \$1.

(3) CERTIFIED COPIES. For certified copies of any document, 50 cents per page if prepared by the clerk, 25 cents per page if only compared by the clerk, but in no case less than \$1. If a photostatic copy is furnished by the applicant the fee for certifying the same shall be \$1 regardless of the number of pages. There shall be no additional charge made for the certificate.

History: 1963 c. 37.

299.26 Costs on appeal. On appeal to the circuit court, the appellant shall pay to the clerk of court a suit tax of \$5 as provided in s. 271.21 and a filing fee of \$5 as provided in s. 59.42 (3).

History: 1961 c. 519; 1963 c. 407.

299.27 Adjournments. (1) ON REQUEST. A party who appears on the return date shall be given, on request, an adjournment of at least 7 days, or such longer period as the court grants.

(2) FOR CAUSE. For good cause shown to the court by either party, the court may extend the time within which any act may be done, except the time for the taking of an appeal.

(3) SAME; TERMS. No continuance under sub. (2) shall be granted, unless by consent of the parties, except upon such terms as the court deems just.

History: 1961 c. 519.

299.28 New trial. (1) ERRORS; VERDICT CONTRARY TO LAW OR EVIDENCE; INTEREST OF JUSTICE. Any party not in default may move to set aside a verdict and for a new trial because of errors in the trial, or because the verdict is contrary to law or to the evidence, or in the interest of justice. Such motion must be made and heard within 20 days after the verdict is rendered, unless the court by order made before its expiration extends such time for cause. Such motion, if not decided within 10 days of the date of hearing, shall be deemed overruled. The entry of judgment by the court without deciding a pending motion for a new trial shall be deemed to overrule the motion.

(2) NEWLY DISCOVERED EVIDENCE. A motion to set aside a verdict or to open up a judgment and for a new trial founded upon newly discovered evidence may be heard upon affidavits and the proceedings in the action. Such a motion may be made at any time within one year from the verdict or finding. The order granting or denying the motion shall be in writing and shall specify the grounds for granting the new trial, or state the court's reasons for denying it.

History: 1961 c. 519; 1963 c. 407.

299.29 Default judgments. (1) MOTION TO REOPEN. There shall be no appeal from default judgments, but the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown. The notice of motion must be made within 20 days after entry of judgment in ordinance violation actions and within 90 days in other actions. In ordinance violation cases default judgments for purposes of this section include pleas of guilty, nolo contendere and forfeitures of deposit.

(2) STIPULATIONS. The court, judge or justice having trial jurisdiction to recover a forfeiture may, with or without notice, for good cause shown by affidavit and upon just terms, within 30 days after such stipulation has been entered into, relieve any person from such stipulation or any order, judgment or conviction entered or made thereon. Where such stipulation was made without appearance in or having been filed in court, the court, judge or justice may order a written complaint to be filed and set the matter for trial. The stipulation or a copy shall, in such cases, be filed with the court, judge or justice and costs and fees shall be taxed as provided by law.

History: 1963 c. 407.

299.30 Appeal. (1) ORDERS. An appeal may be taken to the circuit court from orders denying motions or petitions made under ss. 299.14, 299.28 and 299.29 within 20 days of entry of such order.

(2) WHERE TRIED BY 12-MAN JURY. If an action was tried with a 12-man jury under Title XXV, any appeal shall be taken under ch. 274.

(3) OTHER JUDGMENTS. Within 20 days (10 days in unlawful detainers) after the date of mailing of notice of entry of judgment, as appears in the case docket, any appeal other than one specified in sub. (2) may be taken to the circuit court by any party to

an action or proceeding from any final judgment by filing a notice of appeal signed by appellant or his attorney with the clerk of the court which tried the case under this chapter, and by serving a copy of the notice of appeal on all parties bound by the judgment who appeared in the action or their attorneys. Execution may be stayed under ch. 274, except that in unlawful detainers, the security provisions of ss. 291.11 and 291.13 shall apply. Within 40 days after notice of appeal is filed the appellant shall file with the clerk of court either a transcript of the reporter's notes of the trial or an agreed statement on appeal, or a statement that his appeal can be supported by the case file without the transcript. The appellant shall pay the costs of preparing the transcript.

(4) **CLERK TO MAKE RETURNS.** Within 10 days after the transcript, or agreed statement under s. 299.31, or statement that the appeal can be supported by the case file without the transcript, is filed with the clerk, the clerk shall return the case file, and any transcript or agreed statement, or statement as to the appeal being supported by the case file alone, which has been filed with him, to the circuit court, and shall notify the parties of such filing in the circuit court.

(5) **CIRCUIT COURT POWER ON APPEAL.** On appeal, the circuit court has power similar to that of the supreme court under ch. 274 to review and to affirm, reverse, or modify the judgment appealed from, and in addition the circuit court may order a new trial in whole or in part, which shall be in the circuit court.

(6) **MOTIONS IN APPELLATE COURT.** At any time after the filing in the circuit court of the return on an appeal, any party to the action or proceeding, upon notice under s. 269.31, may move that the judgment appealed from be affirmed, or modified and affirmed as modified, or that the appeal be dismissed, or may move for a new trial or a reversal. This motion shall state concisely the grounds upon which it is made and shall be heard on the record.

History: 1961 c. 519; 1963 c. 407.

Cross Reference: See 66.12 for provision for appeals in city and village ordinance violation cases.

299.31 Agreed statement. In lieu of a transcript on appeal, the oral proceedings may be presented in an agreed statement signed by all the parties to the appeal. This shall be a condensed statement in narrative form of all or such portions of the oral proceedings as are necessary to a determination of the questions on appeal.

History: 1961 c. 519.