

## CHAPTER 751

## SUPREME COURT

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**751.01 Terms of justices.** The term of office of an elected justice of the supreme court commences on the August 1 next succeeding the justice's election.

**History:** 1977 c. 187 s. 74.

**751.02 Employes.** The supreme court may appoint the employes it considers necessary for the execution of the functions of the supreme court and the court of appeals and may designate titles, prescribe duties and fix compensation. Compensation and benefits of employes should be consistent with that paid to state employes in the classified service for services involving similar work and responsibility. Each justice and court of appeals judge may appoint and prescribe the duties of a secretary and a law clerk to assist the justice or judge in the performance of his or her duties. A person appointed by the supreme court or a justice or court of appeals judge serves at the pleasure of the court or the justice or judge.

**History:** 1977 c. 187.

**751.03 Assignment of judges.** (1) The chief justice of the supreme court may assign any active supreme court justice, court of appeals judge or circuit judge to serve temporarily as a judge of the court of appeals or any circuit court to aid in the proper disposition of business in that court. The chief justice of the supreme court may designate and assign reserve judges under s. 753.075 to serve temporarily in the court of appeals or the circuit court for any county. While acting under a temporary assignment, an active or reserve justice or judge may exercise all the authority of the court to which he or she is assigned.

(2) The chief justice of the supreme court may exercise the authority under sub. (1) in regard to municipal courts for the limited purpose of assigning a case in which a change of judge is requested under s. 757.19 (5) or is required under s. 300.05 or 300.06 to another

municipal judge or, if none is available, transferring the case to circuit court.

(3) The chief judge of any judicial administrative district may assign any circuit judge within the district to serve in any circuit court within the district.

**History:** 1971 c. 46; 1977 c. 29, 135; 1977 c. 187 s. 84; 1977 c. 305, 447, 449.

**751.04 Seal.** The supreme court shall have a seal and may direct and from time to time alter the inscription and devices thereon; and the department of administration shall procure such seal as may be ordered. The seal of the court now in use shall be the seal thereof until another is provided hereunder.

**History:** 1977 c. 187 s. 86.

**751.05 Appellate jurisdiction.** The supreme court has appellate jurisdiction only, except as otherwise provided by law or the constitution.

**History:** 1977 c. 187 s. 76.

**751.06 Discretionary reversal.** In an appeal in the supreme court, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record, and may direct the entry of the proper judgment or remit the case to the trial court for the entry of the proper judgment or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with statutes or rules, as are necessary to accomplish the ends of justice.

**History:** 1977 c. 187 s. 76.

**Cross Reference:** For reversible error, see 817.37.

The court may reverse in the interest of justice even though proper motions or objections were not made. Judgment reversed where defendant's counsel persisted in asking questions which amounted to testimony on his part and commented on the facts he observed in argument to the jury. *Lorenz v. Wolff*, 45 W (2d) 407, 173 NW (2d) 129.

Where the trial court's order for a new trial is ineffective for failure to comply with 270.49, the supreme court will review the record to determine whether it will order a new trial in the interest of justice. *Tuschel v. Haasch*, 46 W (2d) 130, 174 NW (2d) 497.

A new trial will seldom be ordered under this section where there is a default judgment and no record to show that defendant probably should have prevailed, particularly where 269.46 (1) applies. *Collings v. Phillips*, 54 W (2d) 204, 194 NW (2d) 677.

The general judgment creditor, having failed to timely appeal from the foreclosure judgment, is not entitled under this section to remand for factual determination of one of the real, although perhaps untried, issues affecting the homestead exemption. *Anchor Savings & Loan Asso. v. Week*, 62 W (2d) 169, 213 NW (2d) 737.

A new trial is necessary because of the prosecution's failure to make full and fair pretrial disclosure to defendant of exculpatory evidence. *State v. Stanislawski*, 62 W (2d) 730, 216 NW (2d) 8.

Requirements for new trial upon ground of newly discovered evidence discussed. *State v. Boyce*, 75 W (2d) 452, 249 NW (2d) 758.

Plaintiffs' request for new trial to permit jury to consider absence of right exterior mirror was properly denied because the real controversy, driver's negligence, had been fully tried. *Buel v. La Crosse Transit Co.* 77 W (2d) 480, 253 NW (2d) 232.

Where verdict form did not contain special fact question regarding major issue of case, real issues had not been tried. *Schulz v. St. Mary's Hospital*, 81 W (2d) 638, 260 NW (2d) 783.

**751.07 Writs.** In addition to the writs mentioned in section 3 of article VII of the constitution the supreme court may issue all writs necessary to enforce the administration of justice. One or more justices may issue writs in accordance with court rules or internal procedures.

History: 1977 c. 187 s. 76.

**751.08 Enforcement of judgments and determinations.** The supreme court has all power and authority to enforce its judgments and determinations and to exercise its jurisdiction as the supreme judicial tribunal of the state.

History: 1977 c. 187.

**751.09 Referral of issues of fact and damages.** In actions where the supreme court has taken original jurisdiction, the court may refer issues of fact or damages to a circuit court or referee for determination.

History: 1977 c. 187 s. 78.

**751.10 Decisions to be written; part of record; certified to United States court; printed for justices.** The supreme court shall decide all cases in writing. One copy of each written decision or opinion delivered by the court or a justice in an action or proceeding in the court shall remain in the office of the clerk of the supreme court and one copy shall constitute

a part of the record in the action or proceeding and shall be certified to a court of the United States to which the action or proceeding or record is certified or removed. The supreme court may require the department of administration to print its decisions and opinions in the form and number directed by the court.

History: 1977 c. 187 s. 79.

**751.11 Wisconsin reports.** The supreme court may make such provisions for publication of its opinions as it deems appropriate.

History: 1975 c. 39; 1977 c. 187 s. 80.

**751.12 Rules of pleading and practice.**

The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice and procedure in judicial proceedings in all courts, for the purpose of simplifying the same and of promoting the speedy determination of litigation upon its merits. The rules shall not abridge, enlarge or modify the substantive rights of any litigant. The effective dates for all rules adopted by the court shall be January 1 or July 1. A rule shall not become effective until 60 days after its adoption. All such rules shall be printed by the state printer and paid for out of the state treasury, and the court shall direct the rules to be distributed as it deems proper. All statutes relating to pleading, practice and procedure may be modified or suspended by rules promulgated under this section. No rule modifying or suspending such statutes may be adopted until the court has held a public hearing with reference to the rule. Notice of public hearings shall be given by publication of a class 3 notice, under ch. 985, the expense of the publication to be paid out of the state treasury. Notice shall also be given in an official publication of the state bar of Wisconsin, the notice to be published not more than 60 days nor less than 30 days before the date of hearing. The state bar of Wisconsin shall not charge the state treasury for publication of this notice. Proposed rules, including changes, if any, in existing rules, shall be set forth in full in the notice. This section shall not abridge the right of the legislature to enact, modify or repeal statutes or rules relating to pleading, practice or procedure. The judicial council shall act in an advisory capacity to assist the court in performing its duties under this section.

History: 1977 c. 187 s. 82.