CHAPTER 879

PROBATE — NOTICE, APPEARANCE, APPEAL AND MISCELLANEOUS PROCEDURE

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Cross–reference: See definitions in ch. 851.

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

History: 1977 c. 449.

An "action" under s. 801.01 includes a special proceeding such as probate. In Matter of Estate of Martz, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

In probate actions, as in civil cases generally, the burden is on the petitioner to move the case forward. Theis v. Short, 2010 WI App 108, 328 Wis. 2d 162, 789 N.W.2d 585, 09–1591.

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

(2) WHO ENTITLED TO NOTICE. The following persons are entitled to notice:

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

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

(c) The attorney general where a charitable trust, as defined in s. 701.0103 (4), is involved, and in all cases mentioned in s. 852.01 (3).

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

(4) WHEN ORDER DOES NOT SPECIFICALLY DESIGNATE PERSONS INTERESTED. If the order does not specifically designate the persons to whom notice is to be given, the order shall be deemed to refer to the persons set forth in the petition for the hearing or otherwise shown by the record as being persons interested and to the post–office addresses set forth or otherwise shown therein. The order and record shall be conclusive in all collateral actions and proceedings as to the names being the names of all persons interested and as to the reasonable diligence of the personal representative in determining the post–office addresses.

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

History: 1973 c. 90, 233, 336; 1975 c. 198 s. 65; 1975 c. 421; 1977 c. 73, 449; 1983 a. 189 s. 329 (26); 1991 a. 220; 1993 a. 486; 2013 a. 92.

Cross–reference: See s. 851.21 which defines "persons interested".

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

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

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

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

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

History: 1973 c. 12; Sup. Ct. Order, 67 Wis. 2d 585, 783 (1975); 1977 c. 449.

When heirs at law had not been heard from for 30 to 40 years, published notice of hearing on proof of the will was legal notice to the heirs under s. 856.11. In re Estate of Phillips, 92 Wis. 2d 354, 284 N.W.2d 908 (1979).

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

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

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 783 (1979); 1975 c. 218; 1993 a. 486.

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

History: 1991 a. 220; 2005 a. 216, 387; 2007 a. 97.

The court's decision not to use the issuing judge's name in the caption of the action in order to prevent prejudice was within the court's discretion. Estate of Burgess v. Peterson, 196 Wis. 2d 55, 537 N.W.2d 115 (Ct. App. 1995), 94–3043.

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

History: 1991 a. 220; 1993 a. 486; 2005 a. 387.

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

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1993 a. 486; 2005 a. 387.

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

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

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

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

(3) Every other person shall appear in person, by attorney or, if in the military service, by an attorney–in–fact.

History: 1973 c. 233; 1975 c. 198 s. 65; 1975 c. 421; 1977 c. 449; 1991 a. 220; 2005 a. 387.

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

879.17 Attorney, appearance by. The attorney who first appears for any party or person interested shall be recognized as the attorney throughout the matter or proceeding unless another attorney is substituted under SCR 11.02 (3).

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

An executor who asked for substitution when probate had just been begun because the heirs desired it and to avoid conflict with them had shown sufficient cause for changing attorneys. Estate of Ainsworth, 52 Wis. 2d 152, 187 N.W.2d 828, 189 N.W.2d 505 (1971).

879.19 Attorney, notice to. Except for a person in the military service, as provided in s. 879.09, if a person interested who is not a minor or an individual adjudicated incompetent has retained an attorney to represent him or her and the attorney has mailed a notice of retainer and request for service to the attorney for the personal representative and filed a copy with the court, any notice that would be given to the person interested shall instead be given to the attorney, and the attorney may waive notice for the person interested under s. 879.09.

History: 1991 a. 220; 1993 a. 486; 2005 a. 387.

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

History: 1973 c. 90; 1993 a. 486.

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

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

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

(4) WHO MAY SERVE. (a) Except as provided in par. (b) or (c), the guardian ad litem appointed under this section shall be either an attorney admitted to practice in this state or a parent or child of the minor or individual adjudicated incompetent to be represented by the guardian ad litem. A parent or child of the person to be represented may be appointed the guardian ad litem under this section

only if the court finds either that the prospective guardian ad litem is an attorney admitted to practice in this state or is otherwise suitably qualified to perform the functions of the guardian ad litem.

(b) In matters relating to the probate of an estate in which a minor has an interest that is unlikely to exceed $10,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If no parent of the minor is qualified and willing to serve as guardian ad litem, the guardian ad litem shall be an attorney as provided in par. (a).

(c) In matters relating to the probate of an estate in which an individual adjudicated incompetent has an interest that is unlikely to exceed $1,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If the court finds that no surviving parent is qualified and willing to serve, the guardian ad litem shall be an adult child of the individual, unless the court finds that no adult child of the individual is qualified and willing to serve as the guardian ad litem. If the court finds that neither a parent nor an adult child of the individual adjudicated incompetent is qualified and willing to serve as the guardian ad litem, the court shall appoint an attorney as provided in par. (a).

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

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

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1973 c. 233; 1977 c. 299; 1979 c. 110 s. 60 (2); 1993 a. 486; 1995 a. 225; 1997 a. 290; 2005 a. 387.

Cross–reference: See s. 757.48 for general provisions on guardian ad litem.

Factors for determining a reasonable number of hours that a guardian ad litem spent on a case are discussed. The guardian ad litem is entitled to compensation for collecting a fee to the extent that the estate's opposition to the fee was unreasonable. In Matter of Estate of Trotalli, 123 Wis. 2d 340, 366 N.W.2d 879 (1985).

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

History: 1973 c. 233; 1991 a. 220.

879.26 Waiver of right to certain documents. Any person who is not a minor or an individual adjudicated incompetent may in writing waive the person's right to be given a statement that the inventory has been filed under s. 858.03 and a copy of accounts under s. 862.11.

History: 1971 c. 211 s. 126; 1993 a. 486; 2005 a. 387.

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

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

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

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 783 (1975); 1977 c. 187, 449; 1979 c. 89; 1983 a. 219; 1993 a. 486; 2005 a. 387.

Judicial Council Note, 1983: Sub. (3) providing an appeal deadline of 60 days from entry of order or judgment in probate proceedings, has been repealed for greater uniformity. An appeal must be initiated within the time period specified in s. 808.04 (1). [Bill 151–S]

A memorandum decision in a probate proceeding was treated as an order terminating the proceeding and therefore appealable although no separate order was entered when it appeared that the memorandum decision was clearly intended to be a final ruling. Estate of Boerner, 46 Wis. 2d 183, 174 N.W.2d 457 (1970).

The agents of an incompetent named in her health care and durable power of attorney documents had standing to appeal under sub. (1). Because they were agents under these two documents, they were substitutes for the incompetent for purposes of sub. (1). Guardianship of Muriel K. 2002 WI 27, 251 Wis. 2d 10, 640 N.W.2d 773, 00–0929.

Final orders and final judgments in probate cases should state that they are final for the purposes of an appeal, if that is the intention of the parties involved and of the circuit court. Sanders v. Estate of Sanders, 2008 WI 63, 310 Wis. 2d 175, 750 N.W.2d 806, 06–0424.

879.31 Relief from judgment or order. On motion, notice to adverse parties and hearing, the court may relieve a party or legal representative from a judgment or orders of the court or the party's stipulation as provided in s. 806.07.

History: 1983 a. 219.

879.33 Costs, if allowed; judgment for. Costs may be allowed in all appealable contested matters in court to the prevailing party, to be paid by the losing party or out of the estate as justice may require; and if costs are allowed they shall be taxed by the register in probate after the notice required in ch. 814. If costs are allowed, the court shall render judgment therefor, stating in whose favor and against whom rendered and the amount, and a list of the items making the amount shall be filed with the papers in the case. Costs shall not be taxed against a guardian ad litem, except as provided in s. 814.14.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); Sup. Ct. Order, 67 Wis. 2d 783; 1977 c. 449.

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

Nothing in this section or s. 879.37 suggests a trial is necessary for an award of attorney fees and costs. When a party concedes nothing and an opposing party capitulates before the court to the very best outcome the first party could have achieved if the matter had proceeded to trial, the first party has prevailed. Troy v. Hurkman, 2017 WI App 59, 378 Wis. 2d 75, 902 N.W.2d 794, 16–0387.

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

History: 1993 a. 486; 2001 a. 102.

A finding of undue influence on the part of the unsuccessful proponent disqualifies the proponent from asserting "good faith" under the statute. In re Estate of Christen, 72 Wis. 2d 8, 239 N.W.2d 528 (1976).

If the court finds good faith, the court may, but need not, award costs and attorney fees to the unsuccessful proponent of a will. Estate of Persha, 2002 WI App 113, 255 Wis. 2d 767, 649 N.W.2d 661, 01–1132.

879.37 Attorney fees in contests. Reasonable attorney fees may be awarded out of the estate to the prevailing party in all appealable contested matters, to an unsuccessful proponent of a will if the unsuccessful proponent is named in the will to act as personal representative and propounded the document in good faith, and to the unsuccessful contestant of a will if the unsuccessful

contestant is named to act as personal representative in another document propounded by the unsuccessful contestant in good faith as the last will of the decedent.

History: 1993 a. 486; 2001 a. 102.

A finding of undue influence on the part of the unsuccessful proponent disqualifies it from asserting "good faith" under this section. In re Estate of Christen, 72 Wis. 2d 8, 239 N.W.2d 528 (1976).

If the court finds good faith, the court may, but need not, award costs and attorney fees to the unsuccessful proponent of a will. Estate of Persha, 2002 WI App 113, 255 Wis. 2d 767, 649 N.W.2d 661, 01–1132.

An objector is a prevailing party if he or she achieves some significant benefit in litigation involving a claim against the estate. The prevailing party can include multiple interested parties who register objections and defend. The awarding of attorney fees is not limited to when the personal representative fails to act or when the award benefits the estate. The award of attorney fees is discretionary. Estate of Wheeler v. Franco, 2002 WI App 190, 256 Wis. 2d 757, 649 N.W.2d 711, 01–3344.

This section limits a prevailing party to recovery from the estate only. It does not allow the prevailing party to seek to recover costs and fees from the portion of the estate that is distributed to particular heirs. Bloom v. Grawoig, 2008 WI App 28, 308 Wis. 2d 349, 746 N.W.2d 532, 07–0042.

There is no prevailing party and no appealable contested matter when a will contest results in settlement. As such, the trial court properly denied a party's claim for attorney fees. Wolf v. Estate of Wolf, 2009 WI App 183, 322 Wis. 2d 674, 777 N.W.2d 119, 09–0781.

Nothing in s. 879.33 or this section suggests a trial is necessary for an award of attorney fees and costs. When a party concedes nothing and an opposing party capitulates before the court to the very best outcome the first party could have achieved if the matter had proceeded to trial, the first party has prevailed. Troy v. Hurkman, 2017 WI App 59, 378 Wis. 2d 75, 902 N.W.2d 794, 16–0387.

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

History: 1977 c. 449.

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

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

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

(3) To witnesses and interpreters, the fees under s. 814.67, and to expert witnesses, the fees under s. 814.04 (2);

(4) Travel as fixed by the court;

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 783 (1975); 1977 c. 187 s. 135; 1977 c. 449; 1981 c. 317 s. 2202.

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

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

(3) ENTRY. Judgments may be entered in the judgment and lien docket in the office of the clerk of circuit court, upon the filing of a certified transcript of the judgment.

(4) LIEN. A judgment entered in the judgment and lien docket creates a lien upon the real estate of the debtor under s. 806.15.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1977 c. 449; 1979 c. 89; 1995 a. 224.

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

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

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

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

(5) SELECTION OF JURORS. Jurors shall be selected under ch. 756 and trials by jury shall be under ch. 805.

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

(7) PRETRIAL CONFERENCE. The court may hold a pretrial conference under s. 802.10 (5).

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1977 c. 418 s. 929 (8m); 1977 c. 447 s. 210; 1977 c. 449; 1979 c. 32; 1981 c. 391; Sup. Ct. Order No. 95–04, 191 Wis. 2d xxi (1995); Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Neither the constitution, statutes, or common law affords the right to trial by jury in a will contest. Estate of Elvers, 48 Wis. 2d 17, 179 N.W.2d 881 (1970). See also In re Estate of Sharpley, 2002 WI App 201, 257 Wis. 2d. 152, 653 N.W.2d 124, 01–2167.

879.47 Papers, preparation and filing. **(1)** The attorney for any person desiring to file any paper in court is responsible for the preparation of the paper. Except as provided in sub. (2), all papers shall be legibly written on substantial paper and shall state the title of the proceeding in which they are filed and the character of the paper. Either uniform forms or computer–generated forms, if the forms exactly recreate the original forms in wording, format and substance, shall be used. If papers are not so written or if uniform forms or computer–generated forms that exactly recreate the original forms in wording, format and substance are not used, the court may refuse to receive and file them. The court shall show on all papers the date of their filing.

(2) Trustees and cotrustees may submit to courts accounts in the format that they normally use for accounts submitted to beneficiaries under this subsection, if all of the information required by the court is included.

History: 1977 c. 449; 1987 a. 220; 1993 a. 130; 2013 a. 92 ss. 199, 342.

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

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

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

History: 1977 c. 449.

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

History: 1977 c. 449.

879.57 Special administrator; personal representative, guardian. If it is found by the court to be necessary to appoint a personal representative or guardian and there appears to be no person in the state to petition for the appointment or there appears to be no suitable person to be so appointed, the court shall, upon its own motion or upon the petition of any interested party, grant administration of an estate of a decedent or guardianship of the estate of a minor or individual who is adjudicated incompetent to the interested party or a special administrator, and he or she shall thereupon take possession of the estate and protect and preserve

it, and proceed with the administration and with the care and management of the estate. The authority of a special administrator in the administration or guardianship may be revoked at any time upon the appointment and qualification of a personal representative or guardian, or when for any other cause the court deems it just or expedient. Revocation of authority does not invalidate the special administrator's acts performed prior to revocation and does not impair the special administrator's rights to receive from the estate his or her legal charges and disbursements, to be determined by the court.

History: 1973 c. 90; 1977 c. 449; 2005 a. 387.

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

(2) BETWEEN TESTATE AND INTESTATE DISTRIBUTEES; PARTIES. The court also may authorize the person named to act as personal representative in one or more instruments purporting to be the last will and testament of a decedent, or the petitioners for administration with the will or wills annexed, to adjust by compromise any controversy that may arise between the persons claiming as devisees or legatees under the will or wills and the persons entitled to or claiming the estate of the deceased under the statutes regulating the descent and distribution of intestate estates, to which agreement or compromise the persons named to act as personal representatives or the petitioners for administration with will annexed, those claiming as devisees or legatees and those claiming the estate as intestate shall be parties, provided that persons named to act as personal representatives in any instrument who have renounced or shall renounce the right to act as personal representative and any person whose interest in the estate is unaffected by the proposed compromise shall not be required to be parties to the compromise.

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

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

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

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

History: 1973 c. 90; 1993 a. 486; 2001 a. 102.

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

An alleged agreement of compromise will not be enforced if items are disputed and it is not agreed to in writing. Estate of McKillip, 53 Wis. 2d 202, 191 N.W.2d 856 (1971).

This section cannot be construed to require that all rights under a will be established and all claims be adjudicated before a compromise of claims is allowed, for that interpretation would not only narrow the area of controversy, eliminate the incentive to compromise, and destroy the purpose of avoiding the costs and risks of litigation, but ignore the right of executors to compromise controversies involving "persons claiming as devisees or legatees" and "persons entitled to or claiming the estate of the deceased" as heirs at law. Estate of Trojan, 53 Wis. 2d 293, 193 N.W.2d 8 (1971).

A guardian ad litem can execute a compromise agreement of his ward's claim in a will contest case when there was no general guardian. Estate of Trojan, 53 Wis. 2d 293, 193 N.W.2d 8 (1971).

The court had no authority to approve a stipulation under sub. (1) without the trustee's approval. In Matter of Estate of McCoy, 118 Wis. 2d 128, 345 N.W.2d 519 (Ct. App. 1984).

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

History: 1977 c. 449; 2001 a. 61.

879.63 Action by person interested to secure property for estate. Whenever there is reason to believe that the estate of a decedent as set forth in the inventory does not include property which should be included in the estate, and the personal representative has failed to secure the property or to bring an action to secure the property, any person interested may, on behalf of the estate, bring an action in the court in which the estate is being administered to reach the property and make it a part of the estate. If the action is successful, the person interested shall be reimbursed from the estate for the reasonable expenses and attorney fee incurred by the person in the action as approved by the court but not in excess of the value of the property secured for the estate.

History: 1993 a. 486.

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

Deferred marital property under s. 861.02 (1) is property subject to administration for all purposes including the payment of claims under s. 879.63. In Matter of Estate of Moccero, 168 Wis. 2d 313, 483 N.W.2d 310 (Ct. App. 1992).

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

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1977 c. 449.

879.69 Court must rule on petition. When the personal representative petitions for a ruling or order in regard to any matter connected with the administration of the estate, the court, after

hearing on notice under s. 879.03 shall make a ruling or grant or deny the petition by order.