

New Rules of Procedure in Wisconsin Courts as Promulgated by Wisconsin Supreme Court

Wisconsin Supreme Court

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NEW RULES OF PROCEDURE IN WISCONSIN COURTS

The Review publishes herewith the new rules of Procedure promulgated by the Wisconsin Supreme Court October 30, 1939, to take effect January 1, 1940.

In the Matter of the Promulgation of Rules relating to Pleading, Practice and Procedure in the Courts of the State of Wisconsin.

For the purpose of simplifying the procedure and promoting the speedy determination of litigation in the courts of the state of Wisconsin,

It is Ordered: That in conformity with the provisions of section 251.18, Wisconsin statutes, the following rules relating to pleading, practice and procedure in judicial proceedings in the courts of the State of Wisconsin, be and the same are hereby promulgated, to take effect as of the first day of January, 1940.

Rule (Section) 251.56

Section (Rule) 251.56 (deposit on filing record in supreme court) is amended to read as follows:

Rule (Section) 251.56 Except in state cases no record shall be filed unless \$10 is deposited with the clerk, to be applied on his fees, which deposit shall be recovered from the opposing party if appellant prevails and be credited to him on the judgment if the opposing party prevails.

Rule (Section) 267.01(3)

Subsection (3) of Section (Rule) 267.01 is amended to read as follows:

Rule (Section) 267.01(3) At any time after the summons is issued in an action for damages, founded upon contract, or an action mentioned in section 266.03 or an action upon a judgment, or when an execution against property has issued or is issuable, the plaintiff may commence a garnishee action.

Rule (Section) 269.65

A Section (Rule) is created to be numbered and to read as follows:

Rule (Section) 269.65 *Pre-trial Procedure*. (1) In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (a) The simplification of the issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (d) The limitation of the number of expert witnesses;
 - (e) The advisability of a preliminary reference of issues for findings to be used as evidence when the trial is to be by jury;
 - (f) Such other matters as may aid in the disposition of the action.
- (2) The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admis-

sions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

Rule (Section) 324.18

A Section (Rule) is created to be numbered and to read as follows:

Rule (Section) 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 postoffice 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 may in writing waive the service of notice upon them and consent to the hearing of any matter without notice.

(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 show 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.

Rule (Section) 310.04

Section (Rule) 310.04 is revised to read as follows:

Rule (Section) 310.04 *Notice of proving will.* When a petition for the probate of a will is presented, the county court shall appoint a time and place for proving the will; and notice of the hearing shall be given as provided in section 324.18.

Rule (Section) 310.11

Section (Rule) 310.11 is revised to read as follows:

Rule (Section) 310.11 *Construction of will, notice.* The notice of hearing upon a petition for the construction of a will shall be given as provided in section 324.18.

Rule (Section) 311.03

Section (Rule) 311.03 is revised to read as follows:

Rule (Section) 311.03 *Notice of application for administration.* When application is made for the appointment of an administrator the court shall appoint a time and place for hearing the application, and notice thereof shall be given as provided in section 324.18.

Subsection (1) of Section (Rule) 313.14 (fixing time to pay debts) is amended as follows:

Rule (Section) 313.14(1)

Rule (Section) 313.14(1) is amended by substituting "324.18" therein for "324.20."

Rule (Section) 313.21

Section (Rule) 313.21 is revised to read as follows:

Rule (Section) 313.21 *Limit on time to pay debts; claims barred.* The court may by order limit the time for paying the debts of the decedent; and notice thereof shall be given to creditors in the manner provided by section 324.20 or in such other manner as the court may direct. If, after such notice has been given, any creditor neglects to demand payment from the executor or administrator, within two years from the time limited by the notice, or if the notice is given after such time, within two years from the date the notice is given, the claim of such creditor shall be barred.

Rule (Section) 314.05

Section (Rule) 314.05 is revised to read as follows:

Rule (Section) 314.05 *Homestead, how assigned.* When the person who is entitled to the homestead of which the decedent died seized and the creditors or other persons in interest are unable to agree as to the boundaries thereof, the homestead may be assigned by the court upon petition. The petition shall describe the lands from which the petitioner asks to have the homestead assigned and allege the facts upon which the petitioner relies. Notice of the proceedings shall be given as provided by section 324.18 and costs shall be awarded as the court shall order. The heirs of any deceased person who, if living, might exercise the right of selecting a homestead, may exercise the right, and if they are minors or under other disability such right may be exercised for them by their guardian or by the court in such manner as will be most beneficial for them.

Rule (Section) 315.03

Section (Rule) 315.03 is revised to read as follows:

Rule (Section) 315.03 *Heirship; hearing, notice.* The court shall, by order, fix a time and place of hearing such petition, and notice thereof shall be given as provided by section 324.18.

Rule (Section) 316.03

Section (Rule) 316.03 is revised to read as follows:

Rule (Section) 316.03 *Sale of realty; order for hearing petition.* If the petition shows that it is necessary to sell, mortgage or lease real estate the court shall fix the time for hearing the petition, and notice thereof shall be given as provided by section 324.18. The creditors need not be notified of the hearing unless the court so orders.

Rule (Section) 316.04

Sections (Rules) 316.04 and 316.05 are hereby repealed.

Subsection (2) of Section (Rule) 316.23 (confirmation of sale) is amended to read as follows:

Rule (Section) 316.23(2)

Rule (Section) 316.23(2) No sale of real estate shall be confirmed without five days' notice of application therefor to all parties who appeared at the hearing upon the petition for sale or other disposition of the real estate.

Rule (Section) 316.35

Section (Rule) 316.35 is revised to read as follows:

Rule (Section) 316.35 *Deed on land contract; petition and notice.* On the presentation of a petition by the executor or administrator, general or special, or by any person claiming to be entitled to such conveyance from any executor or administrator, or by any person interested in the real estate sought to be deeded or the title thereto, setting forth the facts upon which the petition is predicated, the court shall appoint a time and place of hearing such petition and shall order notice of the time and place of hearing to be given as provided in section 324.18.

Rule (Section) 317.10

Section (Rule) 317.10 is revised to read as follows:

Rule (Section) 317.10 *Payment of unfiled claims.* Where an executor or administrator has, in good faith, paid claims against the estate without the claims having been filed, such payments may be allowed upon proof that they were just demands against the estate and were paid within the time limited for the presentation of claims. Notice that application will be made for such allowance shall be served as provided in section 324.18. Payment shall be allowed on a pro rata basis with other claims when the estate is insolvent.

Rule (Section) 317.11

Section (Rule) 317.11 is revised to read as follows:

Rule (Section) 317.11 *Accounts examined; notice; allowance.* Notice of the time and place of the examination and allowance of the accounts of executors and administrators shall be given as provided in section 324.18. Such notice shall not issue until the account is filed. The court must be satisfied of the correctness and legality of the account before allowing it.

Rule (Section) 318.06(7)

Subsection (7) of Section (Rule) 318.06 is revised to read as follows:

Rule (Section) 318.06(7) *Proof of heirship.* No order shall be made assigning the residue of any estate or determining who are the heirs of any deceased person until proof is filed that notice of such proceeding has been given or waived as provided by section 324.18 nor until the testimony or deposition of one or more witnesses is reduced to writing and filed and the court is, from such evidence, fully satisfied as to who are the persons entitled to such residue or are the heirs of such deceased person.

Rule (Section) 318.08(2)

Subsection (2) of Section (Rule) 318.08 (remedy of creditors of nonresident heirs and legatees) is amended to read as follows:

Rule (Section) 318.08(2) Such citation shall be served in the manner provided by section 324.18.

Rule (Section) 318.12

Section (Rule) 318.12 is revised to read as follows:

Rule (Section) 318.12 *Notice of appointment of commissioners.* Notice of the time and place of hearing the application for the appointment of commissioners shall be given as provided by section 324.18.

Rule (Section) 323.05

Section (Rule) 323.05 (removal of trustee) is amended as follows:

Rule (Section) 323.05 is amended by adding at the end thereof "as provided by section 324.18."

Rule (Section) 323.06

Section (Rule) 323.06 (sale by trustee) is amended as follows:

Rule (Section) 323.06 is amended by adding after the word "interest" in the third line, the words "as provided by section 324.18."

Rule (Section) 324.22(1)

Subsection (1) of Section (Rule) 324.22 (correction of court records) is revised to read as follows:

Rule (Section) 324.22(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.

Rule (Section) 326.14

Section (Rule) 326.14 is amended to read as follows:

Rule (Section) 326.14 *Deposition, when may be used.* Except as otherwise provided in section 326.12 every deposition taken in pursuance of a stipulation or after due notice may be used on the trial by any party, if the same shall have been filed with the clerk of the court and the other party notified thereof, or if filed with a justice of the peace, without such notice, before the commencement of the trial and the same be otherwise unobjectionable. But in an action or pro-

ceeding in courts of record, unless such notice be given or the deposition be filed at least five days before the time set for the trial at which it is sought to be used, the opposite party shall be entitled to a continuance for good cause shown, at the cost of the party desiring to use the deposition, unless he will forego the use of it.

The introductory paragraph of Section (Rule) 327.22(1) (demand to admit or deny) is amended to read:

Rule (Section) 327.22(1)

Rule (Section) 327.22(1) (Introductory paragraph) Any party to any action may, by notice in writing served upon a party or his attorney at any time after an issue of fact is joined and not later than ten days before the trial, call upon such other party to admit or refuse to admit in writing:

These rules so far as applicable shall be of uniform operation in the courts of record. They shall take effect and be in force on and after the first day of January, 1940.

It is further ordered: That notice of the promulgation of the foregoing rules be given by the publication of this order in the official state paper and by a single insertion in the Bulletin of the Wisconsin State Bar Association and in the Daily Reporter published in the City of Milwaukee.