

1971 Assembly Bill 278

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CHAPTER 296, Laws of 1971

AN ACT to amend 253.142 (1) (a) and (2) (a); to repeal and recreate 261.08 and 299.205; and to create 261.085 of the statutes, relating to written requests for substitution of a judge.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 253.142 (1) (a) and (2) (a), as affected by chapter 46, laws of 1971, of the statutes are amended to read:

253.142 (1) (a) Any person interested in any contested matter concerning the administration of estates may, either at the time of filing any petition or objection, notice of contest or other paper raising an issue, or at any other time up to and including the day set for hearing such matter, file ~~an affidavit stating that he has good reason to believe and verily believes that from prejudice or other cause the judge of the county court, naming him, will not~~

decide impartially a written request for a substitution of a new judge. The written request shall specifically state the issue in the proceeding as to which the person requests the substitution of a new judge. The judge shall thereupon be disqualified to act in relation to that matter but after conclusion of the hearing he shall continue with the administration of the estate. No person shall be allowed to file an affidavit against such a written request with regard to more than one judge in any contested matter. If a person wishes to file a written request for the substitution of a new judge for the entire proceeding, s. 261.08 shall apply.

(2) (a) In probate matters and in civil matters, except those tried under small claims procedure and other actions to recover forfeitures, ss. ~~261.08~~ 261.085 to 261.11 apply, except that upon the disqualification of any county judge, the case shall be referred to the clerk or, in probate matters in counties having a population of 500,000 or more, the register in probate, who shall request assignment of another judge pursuant to s. 251.182 to attend and hold court in such matter.

SECTION 2. 261.08 of the statutes, as affected by chapter 46, laws of 1971, is repealed and recreated to read:

261.08 SUBSTITUTION OF JUDGE. (1) Any party to a civil action or proceeding may file a written request with the clerk of courts for a substitution of a new judge for the judge assigned to the trial of the case. The written request shall be filed on or before the first day of the term of court at which the case is triable or within 10 days after the case is noticed for trial. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action and to the named judge.

(2) After the written request has been filed, the named judge shall have no further jurisdiction in the action or proceeding except to determine if the request is correct as to form and timely filed. If the request is correct as to form and timely filed, the named judge shall be disqualified and shall promptly request assignment of another judge pursuant to s. 251.182.

(3) No party shall be entitled to file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one of such party of a written request.

SECTION 3. 261.085 of the statutes is created to read:

261.085 ASSIGNED JUDGE. In any case where another judge has been assigned under s. 251.182 to hear a particular action or proceeding, the clerk of circuit court shall forthwith notify all parties to the action or proceeding. If a written request for a substitution of a new judge is filed with regard to an assigned judge, it shall be filed within 7 days after notice of the assignment has been received. A copy of the written request shall be mailed forthwith to all parties and to the named judge.

SECTION 4. 299.205 of the statutes, as affected by chapter 46, laws of 1971, is repealed and recreated to read:

299.205 SUBSTITUTION OF JUDGE. (1) Any party to an action or proceeding under this chapter may file a written request for a substitution of a new judge for the judge assigned to the trial of the case. The written request shall be filed on the return date of the summons or within 10 days after the case is noticed for trial. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action.

(2) After the written request has been filed, the judge shall have no further jurisdiction in the action or proceeding except to determine if the request is correct as to form and timely filed. The case shall then be referred to the clerk who shall request assignment of another judge pursuant to s. 251.82.

(3) No party shall be entitled to file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection, parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one such party of a written request.
