

## CHAPTER 135, Laws of 1977

AN ACT to repeal 88.07 (1), 253.142 (1) and (3), 256.20, 256.21 and 300.055; to renumber 88.07 (2) to (6) and 251.182 (intro.), (1), (2) and (3); to renumber and amend 253.142 (2); to amend 76.22 (3), 88.07 (3) and (5), as renumbered, 103.60 (intro.), 292.28, 299.205, 345.315, 801.58 and 971.20 (2) and (4); to repeal and recreate 103.60 (4), 256.19 and 300.05; and to create 251.182 (5), 299.205 (4), 345.315 (5), 801.58 (4), (5) and (7) and 971.20 (6) and (7) of the statutes, relating to substitution of judges.

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

SECTION 1. 76.22 (3) of the statutes is amended to read:

76.22 (3) The state treasurer for and in the name of the state may bid at the sale and the state may become the purchaser of the property of any such company under a judgment for its sale for taxes, interest and costs. ~~If the judge of the court in which such action is commenced is disqualified or an affidavit of prejudice is filed, such judge shall call upon some other circuit judge to attend and hold court for the trial of the action.~~

SECTION 2. 88.07 (1) of the statutes is repealed.

SECTION 3. 88.07 (2) to (6) of the statutes are renumbered 88.07 (1) to (5), and 88.07 (3) and (5), as renumbered, are amended to read:

88.07 (3) At any time before but not after the hearing has begun on any petition filed under this chapter, any petitioner may withdraw his or her name from the petition upon filing in court an undertaking with sufficient sureties to be approved by the court. Such undertaking shall be conditioned that ~~in case if~~ the withdrawal of names reduces the number of signers below the number required by the section under which ~~such the~~ petition is filed and thereby deprives the court of jurisdiction, ~~such the~~ withdrawing petitioner will pay into court the costs of ~~such the~~ drainage proceeding incurred prior to and including the making and entry of the order denying the prayer of the petition and will pay into court the expenses incurred on ~~such the~~ petition prior to his or her withdrawal.

(5) Any hearing under this chapter may be adjourned by the court or presiding judge or, in his or her absence, by the clerk of court.

SECTION 4. 103.60 (intro.) of the statutes is amended to read:

**103.60 Contempt cases.** (intro.) ~~In all cases where~~ If a person shall be is charged with civil or criminal contempt under this chapter for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy:

SECTION 5. 103.60 (4) of the statutes is repealed and recreated to read:

103.60 (4) A substitution of judge request in this section shall be made under s. 801.58.

SECTION 5g. 251.182 (intro.), (1), (2) and (3) of the statutes are renumbered 251.182 (1), (2), (3) and (4).

SECTION 5r. 251.182 (5) of the statutes is created to read:

251.182 (5) The authority under sub. (1) may also be exercised in regard to municipal courts for the limited purpose of assigning a case in which a change of judge has been requested under s. 256.19 (5) or 345.315 to another municipal justice or, if none is available, to county court.

SECTION 6. 253.142 (1) and (3) of the statutes are repealed.

SECTION 7. 253.142 (2) of the statutes is renumbered 801.58 (6) and amended to read:

801.58 (6) (a) In probate matters ~~and in civil matters, except those tried under small claims procedure and other actions to recover forfeitures, ss. 801.59 to 801.62~~ apply, except that upon the disqualification substitution 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 under s. 251.182 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to ~~such~~ the assigned judge, by mail or in person, for signing or approving, wherever ~~he~~ the judge may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the county court of the county where the records and files of the matter are kept.

SECTION 8. 256.19 of the statutes is repealed and recreated to read:

**256.19 Disqualification of judge.** (1) In this section, "judge" includes the supreme court justices, circuit and county court judges and municipal justices.

(2) Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs:

(a) When a judge is related to any party or counsel thereto or their spouses within the 3rd degree of kinship.

(b) When a judge is a party or a material witness.

(c) When a judge previously acted as counsel to any party in the same action or proceeding.

(d) When a judge prepared as counsel any legal instrument or paper whose validity or construction is at issue.

(e) When a judge of an appellate court previously handled the action or proceeding while judge of an inferior court.

(f) When a judge has a significant financial or personal interest in the outcome of the matter. Such interest does not occur solely by the judge being a member of a political or taxing body that is a party.

(g) When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.

(3) Any disqualification that may occur under sub. (2) may be waived by agreement of all parties and the judge after full and complete disclosure on the record of the factors creating such disqualification.

(4) Any disqualification under sub. (2) in a civil or criminal action or proceeding must occur, unless waived under sub. (3), when the factors creating such disqualification first become known to the judge.

(5) When a judge is disqualified, the judge shall file in writing the reasons and the assignment of another judge shall be requested under s. 251.182.

(6) In addition to other remedies, an alleged violation under this section or abuse of the disqualification procedure shall be referred to the judicial commission of the supreme court.

SECTION 9. 256.20 and 256.21 of the statutes are repealed.

SECTION 10. 292.28 of the statutes is amended to read:

**292.28 (title) Transfer from court commissioner.** ~~In case~~ If the writ is returnable before a court commissioner, either party may ~~file his affidavit of prejudice setting forth that he has good reason to, and does believe, that such court commissioner, naming him, will not decide impartially in such proceedings~~ make a request for transfer to the court in which the matter is filed. Upon receipt of such ~~affidavit~~

request the court commissioner shall forthwith transmit all papers and records in the proceedings to the ~~nearest judge found in the same county, qualified to determine such proceedings. In counties where two or more circuit judges preside such papers and records shall be transmitted to any such judge in such county. The judge to whom such papers and records are transmitted shall try and determine the proceedings as if such proceedings had been commenced before him. But one such change of venue shall be granted court.~~

SECTION 11. 299.205 of the statutes is amended to read:

**299.205 Substitution of judge.** (1) Any party to ~~an a small claims~~ action or proceeding ~~under this chapter~~ 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 the return date of the summons or within 10 days after the case is ~~noticed~~ scheduled 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 original judge.

(2) After the written request has been filed, the original 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~~ 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 under s. 251.182.

(3) ~~No~~ Except as provided in sub. (4), no party ~~shall be~~ is entitled to file more than one such written request in any one action, ~~nor may~~ and any single such request shall not 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.

SECTION 11m. 299.205 (4) of the statutes is created to read:

299.205 (4) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order as to any or all of the parties in a manner such that further proceedings in the trial court are necessary, any party may file a request under sub. (1) within 20 days after the entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

SECTION 12. 300.05 of the statutes is repealed and recreated to read:

**300.05 Substitution of judge.** A substitution of judge in any municipal court matter shall be under the procedures of s. 345.315.

SECTION 13. 300.055 of the statutes is repealed.

SECTION 14. 345.315 of the statutes is amended to read:

**345.315 Change of judge.** (1) In traffic regulation cases a person charged with a violation may file a written request for a substitution of a new judge or justice for the judge or justice assigned to the trial of that case. The written request shall be filed not later than 7 days after the ~~return date of the citation.~~ Upon filing the written request, the alleged violator shall forthwith serve a copy thereof on each party to the action initial appearance in person or by an attorney. The judge or justice against whom a request has been filed may set initial bail and accept a plea.

(2) ~~Not~~ Except as provided in sub. (5), no more than one judge or justice can be disqualified in any action. ~~All defendants must join in any request to substitute a judge or justice.~~

(3) In a court of record ~~in counties having 3 or more county judges the clerk shall reassign any case transferred by virtue of the substitution of a judge as provided herein. The county board of judges shall make rules for such assignment. All other cases shall be assigned~~ assignment of judges shall be made as provided in s. 251.182.

(4) In municipal court, upon receipt of the written request ~~accompanied by a fee of \$4, the justice shall transfer, the case to another justice or to the county court of the~~

~~county where the offense occurred shall be transferred as provided in s. 251.182 (5).~~  
Upon transfer, the justice shall transmit to the appropriate court all the papers in the action and the action shall proceed as if it had been commenced therein.

SECTION 14m. 345.315 (5) of the statutes is created to read:

345.315 (5) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order in a manner such that further proceedings in the municipal court are necessary, the person charged with a violation may file a request under sub. (1) within 20 days after the entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

SECTION 15. 801.58 of the statutes is amended to read:

**801.58 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 preceding the hearing of any preliminary contested matters and not later than 10 days after the date of entry of the notice for a scheduling conference under s. 802.10 (1) (b) or 10 days after service of a standard scheduling order under s. 802.10 (1) (d). 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 that the judge shall~~ 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~~ under s. 251.182. The newly assigned judge shall proceed under s. 802.10 (1).

(3) ~~No party shall be entitled to~~ Except as provided in sub. (7), no party may 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 16. 801.58 (4), (5) and (7) of the statutes are created to read:

801.58 (4) Upon the filing of an agreement signed by all parties to a civil action or proceeding, by the original judge for which a substitution of a new judge has been made, and by the new judge, the civil action or proceeding and pertinent records shall be transferred back to the original judge.

(5) In addition to other substitution of judge procedures, in probate matters a party may file a written request specifically stating the issue in a probate proceeding for which a request for substitution of a new judge has been made. The judge shall thereupon be substituted in relation to that issue but after resolution of the issue shall continue with the administration of the estate. If a person wishes to file a written request for substitution of a new judge for the entire proceeding, subs. (1) to (4) shall apply.

(7) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order as to any or all of the parties in a manner such that further proceedings in the trial court are necessary, any party may file a request under sub. (1) within 20 days after the entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

SECTION 17. 971.20 (2) and (4) of the statutes are amended to read:

971.20 (2) Upon the filing of such request in proper form and within the proper time the judge named in the request shall be without authority to act further in the case except to conduct the initial appearance, accept pleas of not guilty, and set bail if

~~requested by the defendant. Not~~ Except as provided in sub. (7), no more than one judge can may be disqualified substituted in any action.

(4) When a judge is ~~disqualified~~ substituted under this section, the clerk of circuit court shall request assignment of another judge ~~pursuant to~~ under s. 251.182.

SECTION 18. 971.20 (6) and (7) of the statutes are created to read:

971.20 (6) Upon the filing of an agreement signed by the defendant in a criminal action or proceeding, by the prosecuting attorney, by the original judge for which a substitution of a new judge has been made, and by the new judge, the criminal action or proceeding and pertinent records shall be transferred back to the original judge.

(7) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order in a manner such that further proceedings in the trial court are necessary, the defendant may file a request under sub. (1) within 20 days after the entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

SECTION 19. **Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

	A	B	C
	Statute Sections	Old Cross References	New Cross References
	88.06 (3)	88.07 (2)	88.07 (1)
	88.34 (2)	88.07 (2)	88.07 (1)
	88.36 (2)	88.07 (2)	88.07 (1)
	253.11 (2)	300.055	345.315

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