

**ASSEMBLY AMENDMENT 3,
TO 1999 ASSEMBLY BILL 380**

September 23, 1999 – Offered by Representative ALBERS.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 45, line 16: after that line insert:

3 “**SECTION 107m.** 757.71 of the statutes is created to read:

4 **757.71 Substitution of circuit court commissioner.** (1) Except as
5 provided in sub. (2), any party to a civil action or proceeding may file a written
6 request, signed personally or by his or her attorney, with the clerk of courts for a
7 substitution of a new circuit court commissioner for the circuit court commissioner
8 assigned to the case. The written request shall be filed preceding the hearing of any
9 preliminary contested matters and, if by the plaintiff, not later than 60 days after the
10 summons and complaint are filed or, if by any other party, not later than 60 days after
11 service of a summons and complaint upon that party. If a new circuit court
12 commissioner is assigned to the trial of a case, a request for substitution must be
13 made within 10 days of receipt of notice of assignment, provided that if the notice of

1 assignment is received less than 10 days prior to trial, the request for substitution
2 must be made within 24 hours of receipt of the notice and provided that if notification
3 is received less than 24 hours prior to trial, the action shall proceed to trial only upon
4 stipulation of the parties that the assigned circuit court commissioner may preside
5 at the trial of the action. Upon filing the written request, the filing party shall
6 forthwith mail a copy thereof to all parties to the action and to the named circuit court
7 commissioner.

8 (2) In proceedings under ch. 48 or 938, the child, the child's parent, guardian
9 or legal custodian, the expectant mother or the unborn child by the unborn child's
10 guardian ad litem, or the attorney representing the person, either before or during
11 the plea hearing, may file a written request with the clerk of the court or other person
12 acting as the clerk for a substitution of the circuit court commissioner assigned to the
13 proceeding. Upon filing the written request, the filing party shall immediately mail
14 or deliver a copy of the request to the circuit court commissioner named in the
15 request. When any person has the right to request a substitution of circuit court
16 commissioner, that person's counsel or guardian ad litem may file the request. Not
17 more than one such written request may be filed in any one proceeding, nor may any
18 single request name more than one circuit court commissioner. This subsection does
19 not apply to proceedings under s. 48.21 or 48.213. If the proceedings are under s.
20 938.12 or 938.13 (12), only the juvenile or his or her attorney may request
21 substitution.

22 (3) When the clerk receives a request for substitution, the clerk shall
23 immediately contact the circuit court commissioner whose substitution has been
24 requested for a determination of whether the request was made timely and in proper
25 form. If the request is found to be timely and in proper form, the circuit court

1 commissioner named in the request has no further jurisdiction and the clerk shall
2 request the assignment of another circuit court commissioner. If the circuit court
3 commissioner named in the substitution request finds that the request was not
4 timely and in proper form, that determination may be reviewed by the chief judge
5 of the judicial administrative district if the party who made the substitution request
6 files a written request for review with the clerk no later than 10 days after the
7 determination by the circuit court commissioner named in the request. If no
8 determination is made by the circuit court commissioner named in the request
9 within 7 days, the clerk shall refer the matter to the chief judge of the judicial
10 administrative district for determination of whether the request was made timely
11 and in proper form and reassignment as necessary. The newly assigned circuit court
12 commissioner shall proceed with the action or proceeding.

13 **(4)** No party may file more than one such written request in any one action or
14 proceeding, nor may any single such request name more than one circuit court
15 commissioner. For purposes of this subsection, parties united in interest and
16 pleading together shall be considered as a single party, but the consent of all such
17 parties is not needed for the filing by one of such party of a written request.

18 **(5)** Upon the filing of an agreement signed by all parties to a civil action or
19 proceeding, by the original circuit court commissioner for which a substitution of a
20 new circuit court commissioner has been made, and by the new circuit court
21 commissioner, the civil action or proceeding and pertinent records shall be
22 transferred back to the original circuit court commissioner.

23 **(6)** In addition to other substitution of circuit court commissioner procedures,
24 in probate matters a party may file a written request specifically stating the issue
25 in a probate proceeding for which a request for substitution of a new circuit court

1 commissioner has been made. The circuit court commissioner shall thereupon be
2 substituted in relation to that issue but after resolution of the issue shall continue
3 with the administration of the estate.

4 (7) (a) In probate matters upon the substitution of any circuit court
5 commissioner, the case shall be referred to the register in probate, who shall request
6 assignment of another circuit court commissioner to attend and hold court in such
7 matter.

8 (b) Ex parte orders, letters, bonds, petitions and affidavits may be presented
9 to the assigned circuit court commissioner, by mail or in person, for signing or
10 approving, wherever the circuit court commissioner may be holding court, who shall
11 execute or approve the same and forthwith transmit the same to the attorney who
12 presented it, for filing with the circuit court of the county where the records and files
13 of the matter are kept.”.

14 (END)