

1999 DRAFTING REQUEST**Assembly Amendment (AA-AB380)**Received: **09/23/1999**Received By: **nelsorp1**Wanted: **09/23/1999**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing:

This file may be shown to any legislator: **NO**Drafter: **nelsorp1**

May Contact:

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Subject: **Courts - courts/judges**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Court commissioners substitution

Instructions:

Allow substitution of court commissioners

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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/1	nelsorp1	1-9-23-99 kmq	kgf 9/23	kgf/ 9/23			

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King

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

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.** (D)

5 ~~SECTION ??.~~ ~~801.58 of the statutes is amended to read:~~

6 ~~801.58 Substitution of judge,~~ (1) Any party to a civil action or proceeding

7 may file a written request, signed personally or by his or her attorney, with the clerk

8 of courts for a substitution of a new ~~judge~~ ^{circuit court commissioner} for the ~~judge~~ assigned to the case. The

9 written request shall be filed preceding the hearing of any preliminary contested

10 matters and, if by the plaintiff, not later than 60 days after the summons and

11 complaint are filed or, if by any other party, not later than 60 days after service of a

12 summons and complaint upon that party. If a new ~~judge~~ ^{circuit court commissioner} is assigned to the trial of

13 a case, a request for substitution must be made within 10 days of receipt of notice of

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

8 (2) When the clerk receives a request for substitution, the clerk shall
 9 immediately contact the ~~judge~~ whose substitution has been requested for a
 10 determination of whether the request was made timely and in proper form. If the
 11 request is found to be timely and in proper form, the ~~judge~~ named in the request has
 12 no further jurisdiction and the clerk shall request the assignment of another ~~judge~~
 13 ~~under s. 751.09~~. If the ~~judge~~ named in the substitution request finds that the request
 14 was not timely and in proper form, that determination may be reviewed by the chief
 15 judge of the judicial administrative district, ~~or by the chief judge of an adjoining~~
 16 ~~judicial administrative district if the judge named in the request is the chief judge,~~
 17 if the party who made the substitution request files a written request for review with
 18 the clerk no later than 10 days after the determination by the ~~judge~~ named in the
 19 request. If no determination is made by the ~~judge~~ named in the request within 7
 20 days, the clerk shall refer the matter to the chief judge of the judicial administrative
 21 district ~~or to the chief judge of an adjoining judicial administrative district, if the~~
 22 ~~judge named in the request is the chief judge,~~ for determination of whether the
 23 request was made timely and in proper form and reassignment as necessary. The
 24 newly assigned ~~judge~~ shall proceed ~~under s. 802.10(1).~~ ^{with the action or proceeding}

(insert)
2-7

Circuit Court Commissioner

(3)
(2)

with the action or proceeding

Handwritten: circuit court ~~check the 55104 m~~

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⁴ (3) Except as provided in ~~sub (1)~~ ^{or proceeding}, 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.

⁵ (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.

⁶ (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 (6) (a) In probate matters ~~ss. 801.59 to 801.62 apply, except that~~ upon the substitution of any judge, the case shall be referred to the register in probate, who shall request assignment of another judge under s. 751.03 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to the assigned judge, by mail or in person, for signing or approving, wherever 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 circuit court of the county where the records and files of the matter are kept. " .

Handwritten: (End)

Insert 2-7

(B) (2) In proceedings under ch. 48 or 938, or the attorney representing the person,

48.29(1m) (1) The child, the child's parent, guardian or legal custodian, the expectant mother or the unborn child by the unborn child's guardian ad litem, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named in the request. When any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section does not apply to proceedings under s. 48.21 or 48.213.

Circuit court commissioner

No (B) subsection

s. 938.12 or 938.13(12) only. IF the proceedings are under the juvenile or his or her attorney may request substitution.

(1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

799.205(1)

(1) Any party to a small claims 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 case. The written request shall be filed on the return date of the summons or within 10 days after the case is scheduled for trial. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. 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.

799.205(2)

(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. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. 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. 751.03.

801.58(1)

(1) Any party to a civil action or proceeding may file a written request, signed personally or by his or her attorney, with the clerk of courts for a substitution of a new judge for the judge assigned to the case. The written request shall be filed preceding the hearing of any preliminary