

**FLORIDA
JUDICIAL NOMINATING
COMMISSIONER
2015 MANUAL**

Prepared by the Executive Office of the Governor

TABLE OF CONTENTS

- I. The Florida Court System
- II. Relevant Constitutional and Statutory Provisions
 - a. Article I, Section 24, Fla. Const.: Access to Public Records and Meetings
 - b. Article II, Section 5, Fla. Const.: Public Officers
 - c. Article V., Fla. Const.: The Judiciary
 - d. Article X, Section 3, Fla. Const.: Vacancy in Office
 - e. Section 43.291, F.S.: Judicial Nominating Commission
 - f. Section 34.021, F.S.: Qualification of County Court Judges
 - g. Section 440.45, F.S.: Office of the Judges of Compensation Claims
 - h. Section 16.56, F.S.: Office of the Statewide Prosecutor
 - i. Section 27.701, F.S.: Capital Collateral Regional Councils
- III. Uniform Rules
 - a. Uniform Rules of Procedure for Circuit JNCs
 - b. Uniform Rules of Procedure for DCA JNCs
 - c. Supreme Court JNC Rules of Procedure
- IV. Guidelines of Operation of The Statewide Judicial Nominating Commission
- V. Rules Governing Judges
 - a. Code of Judicial Conduct
 - b. Florida Judicial Qualifications Commission Rules
- VI. Judicial Application
 - a. Application for Judicial Seat
 - b. Application for Nomination for Judge of Compensation Claims
- VII. Florida Cases
- VIII. Reimbursement Information
 - a. Memo from Governor's Deputy General Counsel
 - b. Reimbursement Forms
 - c. Executive Office of the Governor Travel Training Handbook
- IX. Ethics & Conflicts Disclosure

I. THE FLORIDA COURT SYSTEM

The Florida Court System

The Florida court system is comprised of county and circuit courts at the trial level, and district courts of appeal and a Supreme Court at the appellate level. There are sixty-seven county courts and twenty circuit courts. There are five district courts of appeal and one Supreme Court. County and circuit court judges are elected. District court judges and Supreme Court justices are appointed by the Governor. However, when a judicial vacancy occurs on a county or circuit court, the Governor appoints a successor.

The Office of Judges of Compensation Claims is statutorily created within the Department of Management Services. Judges of Compensation Claims adjudicate disputes over workers compensation benefits. There are seventeen districts throughout the State.

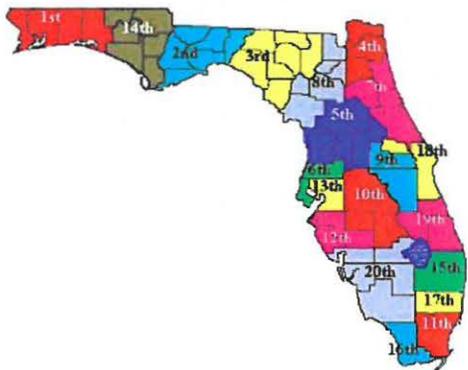
Supreme Court



District Courts of Appeal



Circuit Courts



County Courts



Judicial Nominating Commissions

Judicial Nominating Commissions (JNCs) select nominees to fill judicial vacancies within the Florida court system. There are twenty-seven separate JNCs: one for the Florida Supreme Court; five for each of the district courts of appeal or “appellate districts”; twenty for each circuit court and the county courts contained in that circuit; and one Statewide Commission for Judges of Compensation Claims. The JNCs are required to operate in accordance with the Uniform Rules of Procedure applicable to each level of JNC. JNC members serve four-year terms, except when an appointment is made to fill a vacant, unexpired term. A JNC member may hold public office other than judicial office. JNC members are ineligible for appointment to any judicial office for which the JNC has authority to make nominations during his or her term and for two years thereafter.

The Supreme Court, appellate districts, and circuit JNCs consist of nine members, all of whom are appointed by the Governor. Four members are appointed from separate lists of three nominees certified to the Governor by the Board of Governors of the Florida Bar. The Governor may reject a list of nominees and request that the Board certify a new list of three different nominees for that position. The Governor directly appoints the remaining five members. JNC members must be residents of the territorial jurisdiction served by the JNC for which he or she is appointed.

The Governor appoints judges of compensation claims from nominees chosen by the Statewide Nominating Commission for Judges of Compensation Claims. The Commission consists of fifteen members who are selected pursuant to three different processes. Five of the members are appointed by the Board of Governors of the Florida Bar and must be members of the Florida Bar, engaged in the practice of law. Another five members are appointed directly by the Governor. The last five members are selected and appointed by a majority vote of the other ten members of the Commission.

The Judicial Nominating Process

A judicial vacancy may occur because of resignation, retirement, death, elevation of a sitting judge, or by newly created judgeship. Upon notification of a vacancy, the Governor requests the Chair of the JNC to convene the JNC for the purpose of selecting and submitting names of qualified individuals to the Governor for appointment to the bench. The JNC investigates each applicant to confirm eligibility. Eligible applicants interview with the JNC, which then determines by majority vote which applicants to recommend to the Governor for his consideration. The JNC has no more than sixty days from the time it is requested to convene to nominate no fewer than three and no more than six applicants to the Governor. The Governor has sixty days to appoint a judge from among the nominees.

Upon the expiration of a four-year term, a judge of compensation claims is eligible for reappointment. Prior to the expiration of the term, the Statewide Commission for Judges of Compensation Claims determines whether the judge’s performance has been satisfactory. If so, the Commission sends a report of its findings to the Governor six months before the expiration of the term. If the Governor decides not to reappoint, the Commission does not recommend reappointment, or a vacancy occurs during an unexpired term, the Governor appoints a successor from three nominees chosen by the Commission. The reappointed judge or appointed successor serves a term of four years.

II. RELEVANT CONSTITUTIONAL & STATUTORY PROVISIONS

lawfully executed by any valid method. This section shall apply retroactively.

History.—Am. H.J.R. 3505, 1998; adopted 1998; Am. H.J.R. 951, 2001; adopted 2002.

SECTION 18. Administrative penalties.—No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.

History.—Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 19. Costs.—No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final.

SECTION 20. Treason.—Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort, and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on confession in open court.

SECTION 21. Access to courts.—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

SECTION 23. Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

History.—Added, C.S. for H.J.R. 387, 1980; adopted 1980; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 24. Access to public records and meetings.—

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public

and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

History.—Added, C.S. for C.S. for H.J.R.'s 1727, 863, 2035, 1992; adopted 1992; Am. S.J.R. 1284, 2002; adopted 2002.

SECTION 25. Taxpayers' Bill of Rights.—By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. This section shall be effective July 1, 1993.

History.—Proposed by Taxation and Budget Reform Commission, Revision No. 2, 1992, filed with the Secretary of State May 7, 1992; adopted 1992.

Note.—This section, originally designated section 24 by Revision No. 2 of the Taxation and Budget Reform Commission, 1992, was redesignated section 25 by the editors in order to avoid confusion with section 24 as contained in H.J.R.'s 1727, 863, 2035, 1992.

SECTION 26. Claimant's right to fair compensation.—

(a) Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

(b) This Amendment shall take effect on the day following approval by the voters.

History.—Proposed by Initiative Petition filed with the Secretary of State September 8, 2003; adopted 2004.

SECTION 27. Marriage defined.—Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

History.—Proposed by Initiative Petition filed with the Secretary of State February 9, 2005; adopted 2008.

ARTICLE II

GENERAL PROVISIONS

Sec.

1. State boundaries.
2. Seat of government.
3. Branches of government.
4. State seal and flag.
5. Public officers.
6. Enemy attack.
7. Natural resources and scenic beauty.
8. Ethics in government.
9. English is the official language of Florida.

SECTION 1. State boundaries.—

(a) The state boundaries are: Begin at the mouth of the Perdido River, which for the purposes of this description is defined as the point where latitude 30°16'53" north and longitude 87°31'06" west intersect; thence to the point where latitude 30°17'02" north and longitude 87°31'06" west intersect; thence to the point where latitude 30°18'00" north and longitude 87°27'08" west intersect; thence to the point where the center line of the Intracoastal Canal (as the same existed on June 12, 1953) and longitude 87°27'00" west intersect; the same being in the middle of the Perdido River; thence up the middle of the Perdido River to the point where it intersects the south boundary of the State of Alabama, being also the point of intersection of the middle of the Perdido River with latitude 31°00'00" north; thence east, along the south boundary line of the State of Alabama, the same being latitude 31°00'00" north to the middle of the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence in a straight line to the head of the St. Marys River; thence down the middle of said river to the Atlantic Ocean; thence due east to the edge of the Gulf Stream or a distance of three geographic miles whichever is the greater distance; thence in a southerly direction along the edge of the Gulf Stream or along a line three geographic miles from the Atlantic coastline and three leagues distant from the Gulf of Mexico coastline, whichever is greater, to and through the Straits of Florida and westerly, including the Florida reefs, to a point due south of and three leagues from the southernmost point of the Marquesas Keys; thence westerly along a straight line to a point due south of and three leagues from Loggerhead Key, the westernmost of the Dry Tortugas Islands; thence westerly, northerly and easterly along the arc of a curve three leagues distant from Loggerhead Key to a point due north of Loggerhead Key; thence northeast along a straight line to a point three leagues from the coastline of Florida; thence northerly and westerly three leagues distant

from the coastline to a point west of the mouth of the Perdido River three leagues from the coastline as measured on a line bearing south 0°01'00" west from the point of beginning; thence northerly along said line to the point of beginning. The State of Florida shall also include any additional territory within the United States adjacent to the Peninsula of Florida lying south of the St. Marys River, east of the Perdido River, and south of the States of Alabama and Georgia.

(b) The coastal boundaries may be extended by statute to the limits permitted by the laws of the United States or international law.

SECTION 2. Seat of government.—The seat of government shall be the City of Tallahassee, in Leon County, where the offices of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held; provided that, in time of invasion or grave emergency, the governor by proclamation may for the period of the emergency transfer the seat of government to another place.

SECTION 3. Branches of government.—The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

SECTION 4. State seal and flag.—The design of the great seal and flag of the state shall be prescribed by law.

SECTION 5. Public officers.—

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God."

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

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and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution.

History.—Am. C.S. for H.J.R. 637, 1973; adopted 1974; Am. proposed by Constitution Revision Commission, Revision No. 5, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 10. Attorney General.—The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI.

History.—Added, H.J.R. 71, 1986; adopted 1986; Am. S.J.R. 2394, 2004; adopted 2004.

SECTION 11. Department of Veterans Affairs. The legislature, by general law, may provide for the establishment of the Department of Veterans Affairs.

History.—Added, C.S. for H.J.R. 290, 1988; adopted 1988.

SECTION 12. Department of Elderly Affairs.—The legislature may create a Department of Elderly Affairs and prescribe its duties. The provisions governing the administration of the department must comply with Section 6 of Article IV of the State Constitution.

History.—Added, C.S. for H.J.R. 290, 1988; adopted 1988.

SECTION 13. Revenue Shortfalls.—In the event of revenue shortfalls, as defined by general law, the governor and cabinet may establish all necessary reductions in the state budget in order to comply with the provisions of Article VII, Section 1(d). The governor and cabinet shall implement all necessary reductions for the executive budget, the chief justice of the supreme court shall implement all necessary reductions for the judicial budget, and the speaker of the house of representatives and the president of the senate shall implement all necessary reductions for the legislative budget. Budget reductions pursuant to this section shall be consistent with the provisions of Article III, Section 19(h).

History.—Proposed by Taxation and Budget Reform Commission Revision No. 1, 1992, filed with the Secretary of State May 7, 1992; adopted 1992.

ARTICLE V

JUDICIARY

Sec.

1. Courts.
2. Administration; practice and procedure.
3. Supreme court.
4. District courts of appeal.
5. Circuit courts.
6. County courts.
7. Specialized divisions.
8. Eligibility.
9. Determination of number of judges.
10. Retention; election and terms.
11. Vacancies.
12. Discipline; removal and retirement.
13. Prohibited activities.
14. Funding.
15. Attorneys; admission and discipline.
16. Clerks of the circuit courts.
17. State attorneys.
18. Public defenders.
19. Judicial officers as conservators of the peace.
20. Schedule to Article V.

SECTION 1. Courts.—The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality. The legislature shall, by general law, divide the state into appellate court districts and judicial circuits following county lines. Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices. The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions. The legislature may, by general law, authorize a military court-martial to be conducted by military judges of the Florida National Guard, with direct appeal of a decision to the District Court of Appeal, First District.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. H.J.R. 1608, 1988; adopted 1988; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 2. Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of appeal to submit questions relating to military law to the federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(b) The chief justice of the supreme court shall be chosen by a majority of the members of the court; shall be the chief administrative officer of the judicial system; and shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

(c) A chief judge for each district court of appeal shall be chosen by a majority of the judges thereof or, if there is no majority, by the chief justice. The chief judge shall be responsible for the administrative supervision of the court.

(d) A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 3. Supreme court.—

(a) ORGANIZATION.—The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of the original appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) JURISDICTION.—The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

(c) CLERK AND MARSHAL.—The supreme court shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. C.S. for S.J.R.'s 49, 81, 1976; adopted 1976; Am. S.J.R. 20-C, 1979; adopted 1980; Am. H.J.R. 71, 1986; adopted 1986; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 4. District courts of appeal.—

(a) ORGANIZATION.—There shall be a district court of appeal serving each appellate district. Each district court of appeal shall consist of at least three judges. Three judges shall consider each case and the concurrence of two shall be necessary to a decision.

(b) JURISDICTION.—

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

(c) CLERKS AND MARSHALS.—Each district court of appeal shall appoint a clerk and a marshal who shall hold office during the pleasure of the court and perform such duties as the court directs. Their compensation shall be fixed by general law. The marshal shall have the

power to execute the process of the court throughout the territorial jurisdiction of the court, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 5. Circuit courts.—

(a) ORGANIZATION.—There shall be a circuit court serving each judicial circuit.

(b) JURISDICTION.—The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 6. County courts.—

(a) ORGANIZATION.—There shall be a county court in each county. There shall be one or more judges for each county court as prescribed by general law.

(b) JURISDICTION.—The county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 7. Specialized divisions.—All courts except the supreme court may sit in divisions as may be established by general law. A circuit or county court may hold civil and criminal trials and hearings in any place within the territorial jurisdiction of the court as designated by the chief judge of the circuit.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. H.J.R. 37, 1984; adopted 1984 (effective July 1, 1985); Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 9. Determination of number of judges.

The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 10. Retention; election and terms.—

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) (name of justice or judge) of the (name of the court) be retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b)(1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the

qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit and county at the general election in the year 2000. If a vote to exercise this local option fails in a vote of the electors, such option shall not again be put to a vote of the electors of that jurisdiction until the expiration of at least two years.

b. After the year 2000, a circuit may initiate the local option for merit selection and retention or the election of circuit judges, whichever is applicable, by filing with the custodian of state records a petition signed by the number of electors equal to at least ten percent of the votes cast in the circuit in the last preceding election in which presidential electors were chosen.

c. After the year 2000, a county may initiate the local option for merit selection and retention or the election of county court judges, whichever is applicable, by filing with the supervisor of elections a petition signed by the number of electors equal to at least ten percent of the votes cast in the county in the last preceding election in which presidential electors were chosen. The terms of circuit judges and judges of county courts shall be for six years.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. C.S. for S.J.R.'s 49, 81, 1976; adopted 1976; Ams. proposed by Constitution Revision Commission, Revision Nos. 7 and 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 11. Vacancies.—

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

(b) The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within

sixty days after the nominations have been certified to the governor.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. C.S. for S.J.R.'s 49, 81, 1976; adopted 1976; Am. H.J.R. 1160, 1984; adopted 1984; Am. C.S. for S.J.R. 978, 1996; adopted 1996; Ams. proposed by Constitution Revision Commission, Revision Nos. 7 and 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 12. Discipline; removal and retirement.—

(a) JUDICIAL QUALIFICATIONS COMMISSION.— A judicial qualifications commission is created.

(1) There shall be a judicial qualifications commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such discipline. For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. The commission shall be composed of:

a. Two judges of district courts of appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by the judges of those courts;

b. Four electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

c. Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(2) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a judge shall be eligible for state judicial office while acting as a member of the commission and for a period of two years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office or

hold public office; provided that a judge may campaign for judicial office and hold that office. The commission shall elect one of its members as its chairperson.

(3) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(4) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, the rotation of members between the panels, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. The commission shall have power to issue subpoenas. Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public.

(5) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of representatives or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(b) PANELS.—The commission shall be divided into an investigative panel and a hearing panel as established by rule of the commission. The investigative panel is vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel. The hearing panel is vested with the authority to receive and hear formal charges from the investigative panel and upon a two-thirds vote of the panel recommend to the supreme court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties. Upon a simple majority vote of the membership of the hearing panel, the panel may recommend to the supreme court that the justice or judge be subject to appropriate discipline.

(c) SUPREME COURT.—The supreme court shall receive recommendations from the judicial qualifications commission's hearing panel.

(1) The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it may order that the justice or judge be subjected to appropriate discipline, or be removed from office with termination of compensation for willful or persistent failure to perform judicial duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes with

the performance of judicial duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing of a formal proceeding and upon request of the investigative panel, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

(2) The supreme court may award costs to the prevailing party.

(d) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment.

(e) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the judicial qualifications commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

(f) SCHEDULE TO SECTION 12.—

(1) Except to the extent inconsistent with the provisions of this section, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(2) After this section becomes effective and until adopted by rule of the commission consistent with it:

a. The commission shall be divided, as determined by the chairperson, into one investigative panel and one hearing panel to meet the responsibilities set forth in this section.

b. The investigative panel shall be composed of:

1. Four judges,
2. Two members of the bar of Florida, and
3. Three non-lawyers.

c. The hearing panel shall be composed of:

1. Two judges,
2. Two members of the bar of Florida, and
3. Two non-lawyers.

d. Membership on the panels may rotate in a manner determined by the rules of the commission provided that no member shall vote as a member of the investigative and hearing panel on the same proceeding.

e. The commission shall hire separate staff for each panel.

f. The members of the commission shall serve for staggered terms of six years.

g. The terms of office of the present members of the judicial qualifications commission shall expire upon the effective date of the amendments to this section approved by the legislature during the regular session of the legislature in 1996 and new members shall be appointed to serve the following staggered terms:

1. Group I.—The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one judge from the district courts of appeal and one circuit judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 1998.

2. Group II.—The terms of five members, composed of one elector as set forth in s. 12(a)(1)c. of Article V, two members of the bar of Florida as set forth in s. 12(a)(1)b. of Article V, one circuit judge and one county judge as set forth in s. 12(a)(1)a. of Article V shall expire on December 31, 2000.

3. Group III.—The terms of five members, composed of two electors as set forth in s. 12(a)(1)c. of Article V, one member of the bar of Florida as set forth in s. 12(a)(1)b., one judge from the district courts of appeal and one county judge as set forth in s. 12(a)(1)a. of Article V, shall expire on December 31, 2002.

h. An appointment to fill a vacancy of the commission shall be for the remainder of the term.

i. Selection of members by district courts of appeal judges, circuit judges, and county court judges, shall be by no less than a majority of the members voting at the respective courts' conferences. Selection of members by the board of governors of the bar of Florida shall be by no less than a majority of the board.

j. The commission shall be entitled to recover the costs of investigation and prosecution, in addition to any penalty levied by the supreme court.

k. The compensation of members and referees shall be the travel expenses or transportation and per diem allowance as provided by general law.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. H.J.R. 3911, 1974; adopted 1974; Am. H.J.R. 1709, 1975; adopted 1976; Am. C.S. for S.J.R. 978, 1996; adopted 1996; Am. proposed by Constitution Revision Commission, Revision No. 7, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 13. Prohibited activities.—All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 14. Funding.—

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries,

costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(c) No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. proposed by Constitution Revision Commission, Revision No. 7, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 15. Attorneys; admission and discipline.—The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 16. Clerks of the circuit courts.—There shall be in each county a clerk of the circuit court who shall be selected pursuant to the provisions of Article VIII section 1. Notwithstanding any other provision of the constitution, the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. There may be a clerk of the county court if authorized by general or special law.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 17. State attorneys.—In each judicial circuit a state attorney shall be elected for a term of four years. Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal

prosecutors. A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; shall be and have been a member of the bar of Florida for the preceding five years; shall devote full time to the duties of the office; and shall not engage in the private practice of law. State attorneys shall appoint such assistant state attorneys as may be authorized by law.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. H.J.R. 386, 1985; adopted 1986; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 18. Public defenders.—In each judicial circuit a public defender shall be elected for a term of four years, who shall perform duties prescribed by general law. A public defender shall be an elector of the state and reside in the territorial jurisdiction of the circuit and shall be and have been a member of the Bar of Florida for the preceding five years. Public defenders shall appoint such assistant public defenders as may be authorized by law.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 19. Judicial officers as conservators of the peace.—All judicial officers in this state shall be conservators of the peace.

History.—S.J.R. 52-D, 1971; adopted 1972.

SECTION 20. Schedule to Article V.—

(a) This article shall replace all of Article V of the Constitution of 1885, as amended, which shall then stand repealed.

(b) Except to the extent inconsistent with the provisions of this article, all provisions of law and rules of court in force on the effective date of this article shall continue in effect until superseded in the manner authorized by the constitution.

(c) After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:

(1) The supreme court shall have the jurisdiction immediately theretofore exercised by it, and it shall determine all proceedings pending before it on the effective date of this article.

(2) The appellate districts shall be those in existence on the date of adoption of this article. There shall be a district court of appeal in each district. The district courts of appeal shall have the jurisdiction immediately theretofore exercised by the district courts of appeal and shall determine all proceedings pending before them on the effective date of this article.

(3) Circuit courts shall have jurisdiction of appeals from county courts and municipal courts, except those appeals which may be taken directly to the supreme court; and they shall have exclusive original jurisdiction in all actions at law not cognizable by the county courts; of proceedings relating to the settlement of the estate of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate; in all cases in equity including all cases relating to juveniles; of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged; in all

cases involving legality of any tax assessment or toll; in the action of ejectment; and in all actions involving the titles or boundaries or right of possession of real property. The circuit court may issue injunctions. There shall be judicial circuits which shall be the judicial circuits in existence on the date of adoption of this article. The chief judge of a circuit may authorize a county court judge to order emergency hospitalizations pursuant to Chapter 71-131, Laws of Florida, in the absence from the county of the circuit judge and the county court judge shall have the power to issue all temporary orders and temporary injunctions necessary or proper to the complete exercise of such jurisdiction.

(4) County courts shall have original jurisdiction in all criminal misdemeanor cases not cognizable by the circuit courts, of all violations of municipal and county ordinances, and of all actions at law in which the matter in controversy does not exceed the sum of two thousand five hundred dollars (\$2,500.00) exclusive of interest and costs, except those within the exclusive jurisdiction of the circuit courts. Judges of county courts shall be committing magistrates. The county courts shall have jurisdiction now exercised by the county judge's courts other than that vested in the circuit court by subsection (c)(3) hereof, the jurisdiction now exercised by the county courts, the claims court, the small claims courts, the small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts and courts of chartered counties, including but not limited to the counties referred to in Article VIII, sections 9, 10, 11 and 24 of the Constitution of 1885.

(5) Each judicial nominating commission shall be composed of the following:

a. Three members appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, district or circuit;

b. Three electors who reside in the territorial jurisdiction of the court or circuit appointed by the governor; and

c. Three electors who reside in the territorial jurisdiction of the court or circuit and who are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

(6) No justice or judge shall be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. No member shall be eligible for appointment to state judicial office so long as that person is a member of a judicial nominating commission and for a period of two years thereafter. All acts of a judicial nominating commission shall be made with a concurrence of a majority of its members.

(7) The members of a judicial nominating commission shall serve for a term of four years except the terms of the initial members of the judicial nominating commissions shall expire as follows:

a. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1974;

b. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1975;

c. The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1976;

(8) All fines and forfeitures arising from offenses tried in the county court shall be collected, and accounted for by clerk of the court, and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court shall be paid monthly to the county or municipality respectively. If any costs are assessed and collected in connection with offenses tried in county court, all court costs shall be paid into the general revenue fund of the state of Florida and such other funds as prescribed by general law.

(9) Any municipality or county may apply to the chief judge of the circuit in which that municipality or county is situated for the county court to sit in a location suitable to the municipality or county and convenient in time and place to its citizens and police officers and upon such application said chief judge shall direct the court to sit in the location unless the chief judge shall determine the request is not justified. If the chief judge does not authorize the county court to sit in the location requested, the county or municipality may apply to the supreme court for an order directing the county court to sit in the location. Any municipality or county which so applies shall be required to provide the appropriate physical facilities in which the county court may hold court.

(10) All courts except the supreme court may sit in divisions as may be established by local rule approved by the supreme court.

(11) A county court judge in any county having a population of 40,000 or less according to the last decennial census, shall not be required to be a member of the bar of Florida.

(12) Municipal prosecutors may prosecute violations of municipal ordinances.

(13) Justice shall mean a justice elected or appointed to the supreme court and shall not include any judge assigned from any court.

(d) When this article becomes effective:

(1) All courts not herein authorized, except as provided by subsection (d)(4) of this section shall cease to exist and jurisdiction to conclude all pending cases and enforce all prior orders and judgments shall vest in the court that would have jurisdiction of the cause if thereafter instituted. All records of and property held by courts abolished hereby shall be transferred to the proper office of the appropriate court under this article.

(2) Judges of the following courts, if their terms do not expire in 1973 and if they are eligible under subsection (d)(8) hereof, shall become additional judges of the circuit court for each of the counties of their respective circuits, and shall serve as such circuit judges for the remainder of the terms to which they were elected and shall be eligible for election as circuit judges thereafter. These courts are: civil court of record of Dade county, all criminal courts of record, the felony courts of record of Alachua, Leon and Volusia Counties, the courts of record of Broward, Brevard, Escambia, Hillsborough, Lee, Manatee and Sarasota Counties, the

civil and criminal court of record of Pinellas County, and county judge's courts and separate juvenile courts in counties having a population in excess of 100,000 according to the 1970 federal census. On the effective date of this article, there shall be an additional number of positions of circuit judges equal to the number of existing circuit judges and the number of judges of the above named courts whose term expires in 1973. Elections to such offices shall take place at the same time and manner as elections to other state judicial offices in 1972 and the terms of such offices shall be for a term of six years. Unless changed pursuant to section nine of this article, the number of circuit judges presently existing and created by this subsection shall not be changed.

(3) In all counties having a population of less than 100,000 according to the 1970 federal census and having more than one county judge on the date of the adoption of this article, there shall be the same number of judges of the county court as there are county judges existing on that date unless changed pursuant to section 9 of this article.

(4) Municipal courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal courts not previously abolished shall cease to exist. Judges of municipal courts shall remain in office and be subject to reappointment or reelection in the manner prescribed by law until said courts are terminated pursuant to the provisions of this subsection. Upon municipal courts being terminated or abolished in accordance with the provisions of this subsection, the judges thereof who are not members of the bar of Florida, shall be eligible to seek election as judges of county courts of their respective counties.

(5) Judges, holding elective office in all other courts abolished by this article, whose terms do not expire in 1973 including judges established pursuant to Article VIII, sections 9 and 11 of the Constitution of 1885 shall serve as judges of the county court for the remainder of the term to which they were elected. Unless created pursuant to section 9, of this Article V such judicial office shall not continue to exist thereafter.

(6) By March 21, 1972, the supreme court shall certify the need for additional circuit and county judges. The legislature in the 1972 regular session may by general law create additional offices of judge, the terms of which shall begin on the effective date of this article. Elections to such offices shall take place at the same time and manner as election to other state judicial offices in 1972.

(7) County judges of existing county judge's courts and justices of the peace and magistrates' court who are not members of bar of Florida shall be eligible to seek election as county court judges of their respective counties.

(8) No judge of a court abolished by this article shall become or be eligible to become a judge of the circuit court unless the judge has been a member of bar of Florida for the preceding five years.

(9) The office of judges of all other courts abolished by this article shall be abolished as of the effective date of this article.

(10) The offices of county solicitor and prosecuting attorney shall stand abolished, and all county solicitors and prosecuting attorneys holding such offices upon the effective date of this article shall become and serve as assistant state attorneys for the circuits in which their counties are situate for the remainder of their terms, with compensation not less than that received immediately before the effective date of this article.

(e) LIMITED OPERATION OF SOME PROVISIONS.—

(1) All justices of the supreme court, judges of the district courts of appeal and circuit judges in office upon the effective date of this article shall retain their offices for the remainder of their respective terms. All members of the judicial qualifications commission in office upon the effective date of this article shall retain their offices for the remainder of their respective terms. Each state attorney in office on the effective date of this article shall retain the office for the remainder of the term.

(2) No justice or judge holding office immediately after this article becomes effective who held judicial office on July 1, 1957, shall be subject to retirement from judicial office because of age pursuant to section 8 of this article.

(f) Until otherwise provided by law, the nonjudicial duties required of county judges shall be performed by the judges of the county court.

¹(g) All provisions of Article V of the Constitution of 1885, as amended, not embraced herein which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

(h) The requirements of section 14 relative to all county court judges or any judge of a municipal court who continues to hold office pursuant to subsection (d)(4) hereof being compensated by state salaries shall not apply prior to January 3, 1977, unless otherwise provided by general law.

(i) DELETION OF OBSOLETE SCHEDULE ITEMS.—The legislature shall have power, by concurrent resolution, to delete from this article any subsection of this section 20 including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

(j) EFFECTIVE DATE.—Unless otherwise provided herein, this article shall become effective at 11:59 o'clock P.M., Eastern Standard Time, January 1, 1973.

History.—S.J.R. 52-D, 1971; adopted 1972; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

Note.—All provisions of Art. V of the Constitution of 1885, as amended, considered as statutory law, were repealed by ch. 73-303, Laws of Florida.

ARTICLE VI

SUFFRAGE AND ELECTIONS

Sec.

1. Regulation of elections.
2. Electors.

Sec.

3. Oath.
4. Disqualifications.
5. Primary, general, and special elections.
6. Municipal and district elections.
7. Campaign spending limits and funding of campaigns for elective state-wide office.

SECTION 1. Regulation of elections.—All elections by the people shall be by direct and secret vote. General elections shall be determined by a plurality of votes cast. Registration and elections shall, and political party functions may, be regulated by law; however, the requirements for a candidate with no party affiliation or for a candidate of a minor party for placement of the candidate's name on the ballot shall be no greater than the requirements for a candidate of the party having the largest number of registered voters.

History.—Am. proposed by Constitution Revision Commission, Revision No. 11, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 2. Electors.—Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

History.—Am. proposed by Constitution Revision Commission, Revision No. 11, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 3. Oath.—Each eligible citizen upon registering shall subscribe the following: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

SECTION 4. Disqualifications.—

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

(b) No person may appear on the ballot for reelection to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

History.—Am. by Initiative Petition filed with the Secretary of State July 23, 1992; adopted 1992.

SECTION 5. Primary, general, and special elections.—

(a) A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will

expire before the next general election and, except as provided herein, to fill each vacancy in elective office for the unexpired portion of the term. A general election may be suspended or delayed due to a state of emergency or impending emergency pursuant to general law. Special elections and referenda shall be held as provided by law.

(b) If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

History.—Am. S.J.R. 162, 1992; adopted 1992; Am. proposed by Constitution Revision Commission, Revision No. 11, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 6. Municipal and district elections.—Registration and elections in municipalities shall, and in other governmental entities created by statute may, be provided by law.

SECTION 7. Campaign spending limits and funding of campaigns for elective state-wide office. It is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively. A method of public financing for campaigns for state-wide office shall be established by law. Spending limits shall be established for such campaigns for candidates who use public funds in their campaigns. The legislature shall provide funding for this provision. General law implementing this paragraph shall be at least as protective of effective competition by a candidate who uses public funds as the general law in effect on January 1, 1998.

History.—Proposed by Constitution Revision Commission, Revision No. 11, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

ARTICLE VII

FINANCE AND TAXATION

Sec.

1. Taxation; appropriations; state expenses; state revenue limitation.
2. Taxes; rate.
3. Taxes; exemptions.
4. Taxation; assessments.
5. Estate, inheritance and income taxes.
6. Homestead exemptions.
7. Allocation of pari-mutuel taxes.
8. Aid to local governments.
9. Local taxes.
10. Pledging credit.
11. State bonds; revenue bonds.
12. Local bonds.
13. Relief from illegal taxes.
14. Bonds for pollution control and abatement and other water facilities.
15. Revenue bonds for scholarship loans.
16. Bonds for housing and related facilities.
17. Bonds for acquiring transportation right-of-way or for constructing bridges.

Sec.

18. Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue.

SECTION 1. Taxation; appropriations; state expenses; state revenue limitation.—

(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

(b) Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

(c) No money shall be drawn from the treasury except in pursuance of appropriation made by law.

(d) Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.

(e) Except as provided herein, state revenues collected for any fiscal year shall be limited to state revenues allowed under this subsection for the prior fiscal year plus an adjustment for growth. As used in this subsection, "growth" means an amount equal to the average annual rate of growth in Florida personal income over the most recent twenty quarters times the state revenues allowed under this subsection for the prior fiscal year. For the 1995-1996 fiscal year, the state revenues allowed under this subsection for the prior fiscal year shall equal the state revenues collected for the 1994-1995 fiscal year. Florida personal income shall be determined by the legislature, from information available from the United States Department of Commerce or its successor on the first day of February prior to the beginning of the fiscal year. State revenues collected for any fiscal year in excess of this limitation shall be transferred to the budget stabilization fund until the fund reaches the maximum balance specified in Section 19(g) of Article III, and thereafter shall be refunded to taxpayers as provided by general law. State revenues allowed under this subsection for any fiscal year may be increased by a two-thirds vote of the membership of each house of the legislature in a separate bill that contains no other subject and that sets forth the dollar amount by which the state revenues allowed will be increased. The vote may not be taken less than seventy-two hours after the third reading of the bill. For purposes of this subsection, "state revenues" means taxes, fees, licenses, and charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. However, "state revenues" does not include: revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds by the state; revenues that are used to provide matching funds for the federal Medicaid program with the exception of the revenues used to support the Public Medical Assistance Trust Fund or its successor program and with the exception of state matching funds used to fund elective

ARTICLE X
MISCELLANEOUS

Sec.

1. Amendments to United States Constitution.
2. Militia.
3. Vacancy in office.
4. Homestead; exemptions.
5. Coverture and property.
6. Eminent domain.
7. Lotteries.
8. Census.
9. Repeal of criminal statutes.
10. Felony; definition.
11. Sovereignty lands.
12. Rules of construction.
13. Suits against the state.
14. State retirement systems benefit changes.
15. State operated lotteries.
16. Limiting marine net fishing.
17. Everglades Trust Fund.
18. Disposition of conservation lands.
19. High speed ground transportation system.
20. Workplaces without tobacco smoke.
21. Limiting cruel and inhumane confinement of pigs during pregnancy.
22. Parental notice of termination of a minor's pregnancy.
23. Slot machines.
24. Florida minimum wage.
25. Patients' right to know about adverse medical incidents.
26. Prohibition of medical license after repeated medical malpractice.
27. Comprehensive Statewide Tobacco Education And Prevention Program.

SECTION 1. Amendments to United States Constitution.—The legislature shall not take action on any proposed amendment to the constitution of the United States unless a majority of the members thereof have been elected after the proposed amendment has been submitted for ratification.

SECTION 2. Militia.—

(a) The militia shall be composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States; and no person because of religious creed or opinion shall be exempted from military duty except upon conditions provided by law.

(b) The organizing, equipping, housing, maintaining, and disciplining of the militia, and the safekeeping of public arms may be provided for by law.

(c) The governor shall appoint all commissioned officers of the militia, including an adjutant general who shall be chief of staff. The appointment of all general officers shall be subject to confirmation by the senate.

(d) The qualifications of personnel and officers of the federally recognized national guard, including the adjutant general, and the grounds and proceedings for

their discipline and removal shall conform to the appropriate United States army or air force regulations and usages.

SECTION 3. Vacancy in office.—Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

History.—Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 4. Homestead; exemptions.—

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

History.—Am. H.J.R. 4324, 1972; adopted 1972; Am. H.J.R. 40, 1983; adopted 1984; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 5. Coverture and property.—There shall be no distinction between married women and married men in the holding, control, disposition, or encumbering of their property, both real and personal; except that dower or curtesy may be established and regulated by law.

SECTION 6. Eminent domain.—

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

43.291 Judicial nominating commissions.—

(1) Each judicial nominating commission shall be composed of the following members:

(a) Four members of The Florida Bar, appointed by the Governor, who are engaged in the practice of law, each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed. The Board of Governors of The Florida Bar shall submit to the Governor three recommended nominees for each position. The Governor shall select the appointee from the list of nominees recommended for that position, but the Governor may reject all of the nominees recommended for a position and request that the Board of Governors submit a new list of three different recommended nominees for that position who have not been previously recommended by the Board of Governors.

(b) Five members appointed by the Governor, each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed, of which at least two are members of The Florida Bar engaged in the practice of law.

(c) A justice or judge may not be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. A member of a judicial nominating commission is not eligible for appointment, during his or her term of office and for a period of 2 years thereafter, to any state judicial office for which that commission has the authority to make nominations. All acts of a judicial nominating commission must be made with a concurrence of a majority of its members.

(3) Notwithstanding any other provision of this section, each current member of a judicial nominating commission appointed directly by the Board of Governors of The Florida Bar shall serve the remainder of his or her term, unless removed for cause. The terms of all other members of a judicial nominating commission are hereby terminated, and the Governor shall appoint new members to each judicial nominating commission in the following manner:

(a) Two appointments for terms ending July 1, 2002, one of which shall be an appointment selected from nominations submitted by the Board of Governors of The Florida Bar pursuant to paragraph (1)(a);

(b) Two appointments for terms ending July 1, 2003; and

(c) Two appointments for terms ending July 1, 2004.

Every subsequent appointment, except an appointment to fill a vacant, unexpired term, shall be for 4 years. Each expired term or vacancy shall be filled by appointment in the same manner as the member whose position is being filled.

(4) In making an appointment, the Governor shall seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered. The Governor shall also consider the adequacy of representation of each county within the judicial circuit.

(5) A member of a judicial nominating commission may be suspended for cause by the Governor pursuant to uniform rules of procedure established by the Executive Office of the Governor consistent with s. 7 of Art. IV of the State Constitution.

(6) A quorum of the judicial nominating commission is necessary to take any action or transact any business. For purposes of this section, a quorum consists of a majority of commission members currently appointed.

(7) The Executive Office of the Governor shall provide all administrative support for each judicial nominating commission. The Executive Office of the Governor shall adopt rules necessary to administer this section.

History.—s. 1, ch. 2001-282.

34.021 Qualifications of county court judges.—

(1) No person is eligible for election or appointment to the office of county court judge unless the person is, and has been for the preceding 5 years, a member in good standing of the bar of Florida prior to qualifying for election to such office or submitting his or her name to the appropriate judicial nominating commission for appointment. However, a person is eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if he or she is a member in good standing of the bar of Florida.

(2) A county court judge is eligible to seek reelection or retention, notwithstanding the provisions of subsection (1), if, on the first day of the qualification period for election to such office or a retention vote, such judge is actively serving in such office and is not under suspension or disqualification.

(3) Any person who was a county court judge prior to July 1, 1978, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a 3-year law training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar is eligible to seek election or retention and to serve as a county court judge in any county having a population of 40,000 or less, the provisions of subsection (1) to the contrary notwithstanding.

(4) Any county judge who is not a member of the bar, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a law training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar is entitled to serve as a county court judge in any county encompassed in the circuit in which the judge has been elected or retained in a retention vote, when assigned thereto.

History.—s. 10, ch. 72-404; s. 1, ch. 78-346; s. 1, ch. 79-411; s. 1, ch. 83-166; s. 1, ch. 84-303; s. 194, ch. 95-147; s. 1, ch. 99-355.

440.45 Office of the Judges of Compensation Claims.—

(1)(a) There is created the Office of the Judges of Compensation Claims within the Department of Management Services. The Office of the Judges of Compensation Claims shall be headed by the Deputy Chief Judge of Compensation Claims. The Deputy Chief Judge shall report to the director of the Division of Administrative Hearings. The Deputy Chief Judge shall be appointed by the Governor for a term of 4 years from a list of three names submitted by the statewide nominating commission created under subsection (2). The Deputy Chief Judge must demonstrate prior administrative experience and possess the same qualifications for appointment as a judge of compensation claims, and the procedure for reappointment of the Deputy Chief Judge will be the same as for reappointment of a judge of compensation claims. The office shall be a separate budget entity and the director of the Division of Administrative Hearings shall be its agency head for all purposes, including, but not limited to, rulemaking pursuant to subsection (4) and establishing agency policies and procedures. The Department of Management Services shall provide administrative support and service to the office to the extent requested by the director of the Division of Administrative Hearings but shall not direct, supervise, or control the Office of the Judges of Compensation Claims in any manner, including, but not limited to, personnel, purchasing, budgetary matters, or property transactions. The operating budget of the Office of the Judges of Compensation Claims shall be paid out of the Workers' Compensation Administration Trust Fund established in s. [440.50](#).

(b) Effective October 1, 2001, the position of Deputy Chief Judge of Compensation Claims is created.

(2)(a) The Governor shall appoint full-time judges of compensation claims to conduct proceedings as required by this chapter or other law. No person may be nominated to serve as a judge of compensation claims unless he or she has been a member of The Florida Bar in good standing for the previous 5 years and is experienced in the practice of law of workers' compensation. No judge of compensation claims shall engage in the private practice of law during a term of office.

(b) Except as provided in paragraph (c), the Governor shall appoint a judge of compensation claims from a list of three persons nominated by a statewide

nominating commission. The statewide nominating commission shall be composed of the following:

1. Five members, at least one of whom must be a member of a minority group as defined in s. [288.703](#)(3), one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are engaged in the practice of law. On July 1, 1999, the term of office of each person appointed by the Board of Governors of The Florida Bar to the commission expires. The Board of Governors shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 4-year terms each, beginning July 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 2-year terms each, beginning July 1, 1999. Thereafter, each member shall be appointed for a 4-year term;

2. Five electors, at least one of whom must be a member of a minority group as defined in s. [288.703](#)(3), one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor. On July 1, 1999, the term of office of each person appointed by the Governor to the commission expires. The Governor shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 2-year terms each, beginning July 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 4-year terms each, beginning July 1, 1999. Thereafter, each member shall be appointed for a 4-year term; and

3. Five electors, at least one of whom must be a member of a minority group as defined in s. [288.703](#)(3), one of each who resides in the territorial jurisdictions of the district courts of appeal, selected and appointed by a majority vote of the other 10 members of the commission. On October 1, 1999, the term of office of each person appointed to the commission by its other members expires. A majority of the other members of the commission shall appoint members who reside in the odd-numbered district court of appeal jurisdictions to 2-year terms each, beginning October 1, 1999, and members who reside in the even-numbered district court of appeal jurisdictions to 4-year terms each, beginning October 1, 1999. Thereafter, each member shall be appointed for a 4-year term.

A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term. No attorney who appears before any judge of compensation claims more than four times

a year is eligible to serve on the statewide nominating commission. The meetings and determinations of the nominating commission as to the judges of compensation claims shall be open to the public.

(c) Each judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. Effective July 1, 2002, in determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter, including, but not limited to, the requirements of ss. [440.25](#)(1) and (4)(a)-(e), [440.34](#)(2), and [440.442](#). If the judge's performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge's term of office. The Governor shall review the commission's report and may reappoint the judge for an additional 4-year term. If the Governor does not reappoint the judge, the Governor shall inform the commission. The judge shall remain in office until the Governor has appointed a successor judge in accordance with paragraphs (a) and (b). If a vacancy occurs during a judge's unexpired term, the statewide nominating commission does not find the judge's performance is satisfactory, or the Governor does not reappoint the judge, the Governor shall appoint a successor judge for a term of 4 years in accordance with paragraph (b).

(d) The Governor may appoint any attorney who has at least 5 years of experience in the practice of law in this state to serve as a judge of compensation claims pro hac vice in the absence or disqualification of any full-time judge of compensation claims or to serve temporarily as an additional judge of compensation claims in any area of the state in which the Governor determines that a need exists for such an additional judge. However, an attorney who is so appointed by the Governor may not serve for a period of more than 120 successive days.

(e) The director of the Division of Administrative Hearings may receive or initiate complaints, conduct investigations, and dismiss complaints against the Deputy Chief Judge and the judges of compensation claims on the basis of the Code of Judicial Conduct. The director may recommend to the Governor the removal of the Deputy Chief Judge or a judge of compensation claims or recommend the discipline of a

judge whose conduct during his or her term of office warrants such discipline. For purposes of this section, the term "discipline" includes reprimand, fine, and suspension with or without pay. At the conclusion of each investigation, the director shall submit preliminary findings of fact and recommendations to the judge of compensation claims who is the subject of the complaint. The judge of compensation claims has 20 days within which to respond to the preliminary findings. The response and the director's rebuttal to the response must be included in the final report submitted to the Governor.

(3) The Deputy Chief Judge shall establish training and continuing education for new and sitting judges.

(4) The Office of the Judges of Compensation Claims shall adopt rules to effect the purposes of this section. Such rules shall include procedural rules applicable to workers' compensation claim resolution and uniform criteria for measuring the performance of the office, including, but not limited to, the number of cases assigned and disposed, the age of pending and disposed cases, timeliness of decisionmaking, extraordinary fee awards, and other data necessary for the judicial nominating commission to review the performance of judges as required in paragraph (2)(c). The workers' compensation rules of procedure approved by the Supreme Court apply until the rules adopted by the Office of the Judges of Compensation Claims pursuant to this section become effective.

(5) Not later than December 1 of each year, the Office of the Judges of Compensation Claims shall issue a written report to the Governor, the House of Representatives, the Senate, The Florida Bar, and the statewide nominating commission summarizing the amount, cost, and outcome of all litigation resolved in the previous fiscal year; summarizing the disposition of mediation conferences, the number of mediation conferences held, the number of continuances granted for mediations and final hearings, the number and outcome of litigated cases, the amount of attorney's fees paid in each case according to order year and accident year, and the number of final orders not issued within 30 days after the final hearing or closure of the hearing record; and recommending changes or improvements to the dispute resolution elements of the Workers' Compensation Law and regulations. If the Deputy Chief Judge finds that judges generally are unable to meet a particular statutory requirement for reasons beyond their control, the Deputy Chief Judge shall submit such findings and any recommendations to the Legislature.

History.—s. 45, ch. 17481, 1935; CGL 1936 Supp. 5966(43); s. 2, ch. 57-245; s. 1, ch. 61-133; s. 1, ch. 63-179; s. 1, ch. 63-275; s. 1, ch. 65-541; s. 1, ch. 67-515; s. 2, ch. 67-554; s. 1, ch. 69-201; ss. 17, 35, ch. 69-106; s. 1, ch. 70-313; s. 1, ch. 71-290; s. 20, ch. 74-197; s. 3, ch. 74-363; s. 22, ch. 75-209; ss. 14, 23, ch. 78-300; ss. 35, 124, ch. 79-40; ss. 19, 21, ch. 79-312; s. 17, ch. 80-236; s. 16, ch. 83-305; s. 8, ch. 84-267; s. 10, ch. 86-171; ss. 23, 43, ch. 89-289; ss. 39, 56, ch. 90-201; ss. 37, 52, ch. 91-1; s. 34, ch. 91-46; s. 40, ch. 93-415; s. 74, ch. 96-418; s. 11, ch. 98-174; s. 26, ch. 2001-91; s. 46, ch. 2002-194; s. 16, ch. 2002-236; s. 66, ch. 2004-5.

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate “budget entity” as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;
2. Any crime involving narcotic or other dangerous drugs;
3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. [895.02](#)(1)(a), providing such listed offense is investigated in connection with a violation of s. [895.03](#) and is charged in a separate count of an information or indictment containing a count charging a violation of s. [895.03](#), the prosecution of which listed offense may continue independently if the prosecution of the violation of s. [895.03](#) is terminated for any reason;
4. Any violation of the provisions of the Florida Anti-Fencing Act;
5. Any violation of the provisions of the Florida Antitrust Act of 1980, as amended;
6. Any crime involving, or resulting in, fraud or deceit upon any person;
7. Any violation of s. [847.0135](#), relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. [847.0135](#) or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;
8. Any violation of the provisions of chapter 815;
9. Any criminal violation of part I of chapter 499;
10. Any violation of the provisions of the Florida Motor Fuel Tax Relief Act of 2004;
11. Any criminal violation of s. [409.920](#) or s. [409.9201](#);

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act; or

14. Any criminal violation of the Florida Securities and Investor Protection Act; or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

(b) Investigate and prosecute any crime enumerated in subparagraphs (a)1.-14. facilitated by or connected to the use of the Internet. Any such crime is a crime occurring in every judicial circuit within the state.

(c) Upon request, cooperate with and assist state attorneys and state and local law enforcement officials in their efforts against organized crimes.

(d) Request and receive from any department, division, board, bureau, commission, or other agency of the state, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

(2) The Attorney General shall appoint a statewide prosecutor from not less than three persons nominated by the judicial nominating commission for the Supreme Court. The statewide prosecutor shall be in charge of the Office of Statewide Prosecution for a term of 4 years to run concurrently with the term of the appointing official. The statewide prosecutor shall be an elector of the state, shall have been a member of The Florida Bar for the preceding 5 years, and shall devote full time to the duties of statewide prosecutor and not engage in the private practice of law. The Attorney General may remove the statewide prosecutor prior to the end of his or her term. A vacancy in the position of statewide prosecutor shall be filled within 60 days. During the period of any vacancy, the Attorney General shall exercise all the powers and perform all the duties of the statewide prosecutor. A person

appointed statewide prosecutor is prohibited from running for or accepting appointment to any state office for a period of 2 years following vacation of office. The statewide prosecutor shall on March 1 of each year report in writing to the Governor and the Attorney General on the activities of the office for the preceding year and on the goals and objectives for the next year.

(3) The statewide prosecutor may conduct hearings at any place in the state; summon and examine witnesses; require the production of physical evidence; sign informations, indictments, and other official documents; confer immunity; move the court to reduce the sentence of a person convicted of drug trafficking who provides substantial assistance; attend to and serve as the legal adviser to the statewide grand jury; and exercise such other powers as by law are granted to state attorneys. The statewide prosecutor may designate one or more assistants to exercise any such powers.

(4) It is the intent of the Legislature that in carrying out the duties of this office, the statewide prosecutor shall, whenever feasible, use sworn investigators employed by the Department of Law Enforcement, and may request the assistance, where appropriate, of sworn investigators employed by other law enforcement agencies.

History.—ss. 1, 9, ch. 85-179; s. 1, ch. 90-12; s. 1, ch. 92-108; s. 4, ch. 93-212; s. 51, ch. 95-147; s. 5, ch. 95-427; s. 8, ch. 96-252; s. 6, ch. 96-260; s. 69, ch. 96-388; s. 3, ch. 97-78; s. 12, ch. 2001-54; s. 30, ch. 2003-155; s. 8, ch. 2004-73; s. 1, ch. 2004-344; s. 6, ch. 2004-391; s. 9, ch. 2005-209; s. 73, ch. 2005-277; s. 2, ch. 2007-143; s. 1, ch. 2009-242.

27.701 Capital collateral regional counsel.—

(1) There are created three regional offices of capital collateral counsel, which shall be located in a northern, middle, and southern region of the state. The northern region shall consist of the First, Second, Third, Fourth, Eighth, and Fourteenth Judicial Circuits; the middle region shall consist of the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth Judicial Circuits; and the southern region shall consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth Judicial Circuits. Each regional office shall be administered by a regional counsel. A regional counsel must be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state. Each capital collateral regional counsel shall be appointed by the Governor, and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission shall recommend to the Governor three qualified candidates for each appointment as regional counsel. The Governor shall appoint a regional counsel for each region from among the recommendations, or, if it is in the best interest of the fair administration of justice in capital cases, the Governor may reject the nominations and request submission of three new nominees by the Supreme Court Judicial Nominating Commission. Each capital collateral regional counsel shall be appointed to a term of 3 years. Vacancies in the office of capital collateral regional counsel shall be filled in the same manner as appointments. A person appointed as a regional counsel may not run for or accept appointment to any state office for 2 years following vacation of office.

(2) Notwithstanding the provisions of subsection (1), the responsibilities of the regional office of capital collateral counsel for the northern region of the state shall be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. [27.710](#). Each attorney participating in the pilot must be qualified to provide representation in federal court. The Auditor General shall schedule a performance review of the pilot program to determine the effectiveness and efficiency of using attorneys from the registry compared to the capital collateral regional counsel. The review, at a minimum, shall include comparisons of the timeliness and costs of the pilot and the counsel and shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 30, 2007. The Legislature may determine whether to convert the pilot program to a permanent program after receipt of the Auditor General's review.

History.—s. 3, ch. 85-332; s. 145, ch. 95-147; s. 1, ch. 97-313; s. 84, ch. 2003-399; s. 1, ch. 2004-240; ss. 63, 64, ch. 2004-269.

III. UNIFORM RULES

UNIFORM RULES OF PROCEDURE

FOR

CIRCUIT JUDICIAL NOMINATING

COMMISSIONS

AS AMENDED JUNE 25, 2003

1 **UNIFORM RULES OF PROCEDURE FOR CIRCUIT**
2 **JUDICIAL NOMINATING COMMISSIONS**

3
4
5 **Section I. Initial Procedure; Investigative Sources; Notice**

6 Whenever a vacancy occurs in a judicial office within the jurisdiction of a
7 judicial nominating commission, the appropriate commission shall actively seek,
8 receive and review the approved background statements submitted by those who
9 voluntarily request consideration, and by those who otherwise consent in writing to
10 such consideration by the commission. The commission shall require completion of
11 the application form attached hereto and incorporated herein, which shall include a
12 waiver of confidentiality of all material necessary to adequately investigate each
13 applicant, including but not limited to, disciplinary records of The Florida Bar, records
14 of the Florida Board of Bar Examiners, credit records, records maintained by any law
15 enforcement agency, and records of the Florida Judicial Qualifications Commission.

16 The commission shall notify The Florida Bar, representative bar associations
17 (including minority and women's bar associations) within the jurisdiction where the
18 vacancy occurs and electronic media; and shall seek applications for nominations
19 from all persons who meet the eligibility requirements in the Florida Constitution.

20 The commissions may seek and shall receive information from interested persons
21 and groups.

22
23 **Section II. Screening Procedures**

24 Within a reasonable time after notice is given of the existence of the vacancy,
25 the commission shall meet to consider applicants. At this meeting the procedures

26 for screening and voting upon applicant for said vacancy shall be determined.

27

28 **Section III. Electronic Media and Still Photography Coverage**

29 **of Judicial Nominating Commission Proceedings**

30 Subject at all times to the authority of the chairperson of the commission to:

31 (i) control the conduct of proceedings before the commission; (ii) ensure decorum

32 and prevent distractions; and (iii) ensure the fair administration of justice in the

33 pending cause, electronic media and still photography coverage of the open

34 commission proceedings shall be allowed in accordance with Judicial Administrative

35 Rule 2.170.

36

37 **Section IV. Further Investigation; Interviews**

38 The commission shall investigate the fitness and qualifications of each

39 applicant, utilizing all sources reasonably available within the time permitted by the

40 Florida Constitution. In addition, the commission may invite any applicant to appear

41 before a quorum of the commission sitting as a whole to respond to questions

42 deemed pertinent to each applicant's fitness and qualifications to hold the judicial

43 office. All applications, and other information received from or concerning

44 applicants, and all interviews and proceedings of the commission, except for

45 deliberations by the commission, shall be open to the public to the extent required by

46 the Florida Constitution or Florida Statutes.

47 The application shall include a separate page asking applicants to identify

48 their race, ethnicity and gender. Completion of this page shall be optional, and the

49 page shall include an explanation that the information is requested for data collection
50 purposes in order to assess and promote diversity in the judiciary. The chair of the
51 Commission shall forward all such completed pages, along with the names of the
52 nominees, to the JNC Coordinator in the Governor's Office.

53 At a point in the investigative and interview process deemed appropriate by
54 the commission, the commission shall require financial disclosure from the applicant.

55

56 **Section V. Standards and Qualifications; Criteria**

57 No nominee shall be recommended to the governor for appointment unless
58 the commission finds that the nominee meets all constitutional and statutory
59 requirements and is fit for appointment to the particular judicial office after full and
60 careful consideration which consideration shall include but not necessarily limited to
61 the following criteria:

- 62 (a) Personal attributes
 - 63 (1) Personal integrity
 - 64 (2) Standing in community
 - 65 (3) Sobriety
 - 66 (4) Moral conduct
 - 67 (5) Ethics
 - 68 (6) Commitment to equal justice under law
- 69 (b) Competency and experience
 - 70 (1) General health, mental and physical
 - 71 (2) Intelligence

- 72 (3) Knowledge of the law
73 (4) Professional Reputation
74 (5) Knowledge of and experience in the court involved
75 (c) Judicial capabilities
76 (1) Patience
77 (2) Decisiveness
78 (3) Impartiality
79 (4) Courtesy
80 (5) Civility
81 (6) Industry and promptness
82 (7) Administrative ability
83 (8) Possible reaction to judicial power
84 (9) Temperament
85 (10) Independence

86

87 **Section VI. Final Selection of Nominees**

88 By majority vote, the commission shall select no fewer than three and no
89 more than six nominees from the list of applicants who meet the requirements of the
90 Florida Constitution and all other legal requirements for the judicial office.

91 The names of such nominees selected by the commission shall be certified to
92 the governor in alphabetical order, and a copy of all investigative information and
93 documents relating to each such nominee shall be forwarded to the governor.

94

95 **Section VII. Publication of Names of Nominees**

96 The chairperson of the commission shall make public the names of all
97 persons recommended for gubernatorial appointment, without indicating any
98 preference of the commission.

99

100 **Section VIII. Ethical Responsibilities**

101 Judicial nominating commissioners hold positions of public trust. A
102 commissioner's conduct should not reflect discredit upon the judicial selection
103 process or disclose partisanship or partiality in the consideration of applicants.
104 Consideration of applicants shall be made impartially and objectively.

105 A commissioner shall disclose to all other commissioners present all personal
106 and business relationships with an applicant. If a substantial conflict of interest is
107 apparent, that commissioner shall not vote on further consideration of any affected
108 applicants. A Commissioner shall declare any conflict of interest that he/she has.
109 Alternatively, upon motion by any Commissioner, a majority of all of the
110 Commissioners may declare that a commissioner has a conflict of interest. The
111 affected Commissioner may vote on the motion. All balloting by the commission
112 shall be by secret ballot and the chair shall be entitled to vote in all instances. Upon
113 certification of a list of nominees to the governor, no commissioner shall contact the
114 governor or any member of his office or staff, for the purpose of further influencing
115 the governor's ultimate decision. However, if contacted by the governor, or his office
116 or staff, a commissioner shall be entitled to answer questions about each nominee.
117 No attempt should be made to rank such nominees or to otherwise disclose a
118 preference of the commission.

119 **Section IX. Misconduct**

120 Each commissioner shall be accountable to the Governor and the chair of
121 their commission for compliance with these rules and the proper performance of
122 their duties as a member of a judicial nominating commission. Each commissioner
123 affirms that under these rules the Governor and/or the chair of their commission may
124 dispose of any legally sufficient written complaint alleging the misconduct of one or
125 more commissioners or commissions, limited only by Article IV, Section 7 of the
126 Constitution of the State of Florida. Each commissioner further acknowledges that
127 pursuant to Article IV, Section 7 the Governor may suspend from office any
128 commission member for malfeasance, misfeasance, neglect of duty, drunkenness,
129 incompetence, permanent inability to perform their official duties, or commission of a
130 felony.

131 A complaint alleging the misconduct of one or more commissioners (other
132 than the chair) within a single judicial nominating commission shall be reported in
133 writing to the chair of the affected commission for action. Upon the chair's receipt of
134 any such charges, the subject commissioner(s) and the Governor shall be
135 immediately notified thereof and thereafter kept continuously apprised of their status
136 through final disposition. The chair shall investigate any complaint if the allegations
137 are in writing, signed by the complainant, and legally sufficient. A complaint is
138 legally sufficient if the chair determines that it contains ultimate facts which show a
139 violation of these rules or reflects discredit on the judicial selection process. Prior to
140 determining legal sufficiency the chair may require supporting information or
141 documentation as necessary for that determination. Upon determination of legal
142 sufficiency each charge may be disposed of by the chair solely, or may be referred
143 by the chair for disposition by the Governor , exclusively or with the concurrence of

144 the chair, but in consultation with all other members of the affected JNC who are not
145 otherwise involved in the disposition. Disposition of a complaint shall include a
146 hearing which affords the opportunity for the presentation of evidence to be
147 evaluated by a clear and convincing standard of proof. Action shall be taken within
148 60 days of receipt of any written complaint and its final disposition shall be
149 immediately reported.

150 A complaint alleging the sole misconduct of a judicial nominating commission
151 chair shall be reported in writing to the Governor for action. Upon the Governor's
152 receipt of any such charges, the subject chair shall be immediately notified thereof
153 and thereafter kept continuously apprised of their status through final disposition.
154 The Governor shall investigate any complaint if the allegations are in writing, signed
155 by the complainant, and legally sufficient. A complaint is legally sufficient if the
156 Governor determines that it contains ultimate facts which show a violation of these
157 rules or reflects discredit upon the judicial selection process. Prior to determining
158 legal sufficiency the Governor may require supporting information or documentation
159 as necessary for that determination. Upon determination of legal sufficiency, each
160 charge shall be disposed of by the Governor in consultation with all other members
161 of the affected JNC who are not otherwise involved in the disposition. Disposition of
162 a complaint shall include a hearing which affords the opportunity for the presentation
163 of evidence to be evaluated by a clear and convincing standard of proof. Action
164 shall be taken within 60 days of receipt of any written complaint and its final
165 disposition shall be immediately reported.

166 A complaint alleging the misconduct of a judicial nominating commission chair
167 and one or more commissioners of a judicial nominating commission shall be

168 reported in writing to the Governor for action. Upon the Governor's receipt of any
169 such charges, the subject chair and commissioner(s) shall be immediately notified
170 thereof and thereafter kept continuously apprised of their status through final
171 disposition. The Governor shall investigate any complaint if the allegations are in
172 writing, signed by the complainant, and legally sufficient. A complaint is legally
173 sufficient if the Governor determines that it contains ultimate facts which show a
174 violation of these rules or reflects discredit on the judicial selection process. Prior to
175 determining legal sufficiency the Governor may require supporting information or
176 documentation as necessary for that determination. Upon determination of legal
177 sufficiency each charge may be disposed of by the Governor solely, or in
178 consultation with all other members of the affected JNC who are not otherwise
179 involved in the disposition or the subjects of the alleged misconduct. Disposition of a
180 complaint shall include a hearing which affords the opportunity for the presentation
181 of evidence to be evaluated by a clear and convincing standard of proof. Action
182 shall be taken within 60 days of receipt of any written complaint and its final
183 disposition shall be immediately reported.

184

185 **Section X. Annual Meeting; Selection of Chairperson; Local Rules**

186 On July 2 of each year or as soon thereafter as practicable, each commission
187 shall designate a chairperson by majority vote to serve for one year and shall certify
188 his or her name to the Governor. The chairperson shall be entitled to vote in all
189 matters. His or her term shall end on July 1 of the next succeeding year. After July
190 1st and the appointment of all commission vacancies by the Governor, the new
191 commission shall meet to elect by majority vote a vice chairperson who shall have at

192 least two years remaining in his or her term. The vice chairperson shall
193 automatically be nominated for chairperson at the next annual election held.
194 Additional nominations of qualified persons for chairperson are allowed.

195 The chairperson shall keep a permanent written record of the minutes of all
196 meetings of the commission, and all policies and procedures adopted by the
197 commission, and all policies and procedures adopted by the commission during his
198 or her term. At the conclusion of his or her term the outgoing chairperson shall turn
199 over to the newly elected chairperson all minutes of meetings and written records of
200 adopted policies and procedures. Each commission may adopt such additional
201 operating rules, forms and notices as it may from time to time deem necessary, so
202 long as they are not inconsistent with these rules.

203 Within the first twelve months of appointment, each JNC appointee must
204 complete an educational course designed to familiarize members with JNC rules and
205 procedures. Training shall include segments regarding interviewing techniques and
206 diversity sensitivity.

207

208 **Section XI. Amendments**

209 These rules may be amended by majority vote of the circuit judicial
210 nominating commissions, voting by an authorized representative.

211 Upon written request of 25% of all circuit judicial nominating commissions, a
212 meeting shall be convened within 90 days for the purpose of considering
213 amendments to these rules.

214 These rules became effective January 8, 1985. Amendments were made
215 effective January 31, 1989 and February 22, 1991.

216

217 Note: These rules were promulgated by a majority of the circuit judicial nominating
218 commissions, meeting in open session on January 24, 1985 in Miami. The rules
219 were amended in open session on January 11, 1989 in Orlando; February 22, 1991
220 in Tampa; April 3, 1992 in Tampa; January 29, 1993 in Tampa; December 7, 1994 in
221 Tampa; September 6, 1995 in Tampa; January 22, 1997 in Miami; and March 30,
222 2000 in Tampa; and June 25, 2003 in Orlando.

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UNIFORM RULES OF PROCEDURE
FOR
DCA JUDICIAL NOMINATING
COMMISSIONS

AS AMENDED JUNE 25, 2003

1
2 **UNIFORM RULES OF PROCEDURE FOR DCA**
3 **JUDICIAL NOMINATING COMMISSIONS**
4
5

6 **Section I. Initial Procedure; Investigative Sources; Notice**

7 Whenever a vacancy occurs in a judicial office within the jurisdiction of a judicial
8 nominating commission, the appropriate commission shall actively seek, receive, and
9 review the approved background statements submitted by those who voluntarily request
10 consideration, and by those who otherwise consent in writing to such consideration by
11 the commission. Each such background statement shall be in substantial compliance
12 with the form provided for this purpose, and shall include a waiver of confidentiality of all
13 material necessary to adequately investigate each applicant, including but not limited to,
14 disciplinary records of The Florida Bar, records of the Florida Board of Bar Examiners,
15 credit records, records maintained by any law enforcement agency, and records of the
16 Florida Judicial Qualifications Commission. The commission shall notify The Florida
17 Bar, the county or local bar associations (including minority and women's bar
18 associations) within the jurisdiction where the vacancy exists, newspapers of general
19 circulation in such area, and the electronic media, to the extent reasonably possible, of
20 the existence of the vacancy and the deadline for applications. The commissions may
21 seek and shall receive information from interested persons and groups.

22
23 **Section II. Initial Screening**

24 The commission shall require completion of the application for judicial nomination
25 prescribed by the commission. The commission shall meet within a reasonable time
26 after the deadline for applications to evaluate, classify, and list applicants as "most

27 qualified" for further investigation and consideration. The list may be limited in number
28 if agreed upon by 2/3 of the commissioner's voting. No person shall be classified as
29 "most qualified" until the commission affirmatively determines that the applicant meets
30 all legal requirements for that judicial office and that the applicant appears from the
31 materials then available to the commission to possess the personal qualities and
32 attributes of character, experience, judicial temperament, and professional competence
33 essential to that judicial office.

34

35 **Section III. Electronic Media and Still Photography Coverage**
36 **of Judicial Nominating Commission Proceedings**

37 (a) Subject at all times to the authority of the chairperson of the commission
38 to: (i) control the conduct of proceedings before the commission; (ii) ensure decorum
39 and prevent distractions; and (iii) ensure the fair administration of justice in the pending
40 cause, electronic media and still photography coverage of the open commission
41 proceedings shall be allowed in accordance with Judicial Administration Rule 2.170.

42

43 **Section IV. Further Investigation; Interviews**

44 After selection of the "most qualified" list of applicants, the commission shall
45 further investigate the fitness and qualifications of each applicant, utilizing all sources
46 reasonably available within the time permitted by the Florida Constitution. In addition,
47 the commission may invite each "most qualified" applicant to appear before a quorum of
48 the commission sitting as a whole to respond to questions deemed pertinent to each
49 applicant's fitness and qualifications to hold the judicial office. All applications, and

50 other information received from or concerning applicants, and all interviews and
51 proceedings of the commission, except for deliberations by the commission, shall be
52 open to the public to the extent required by the Florida Constitution.

53 The application shall include a separate page asking applicants to identify their
54 race, ethnicity and gender. Completion of this page shall be optional, and the page
55 shall include an explanation that the information is requested for data collection
56 purposes in order to assess and promote diversity in the judiciary. The chair of the
57 Commission shall forward all such completed pages, along with the names of the
58 nominees, to the JNC Coordinator at the Governor's Office.

59 At a point in the investigative and interview process deemed appropriate by the
60 commission, the commission shall:

61 (a) Inquire as to an applicant's past and present affiliation with or
62 membership in legal and nonlegal organizations and clubs that practice or have policy
63 that restricts or has restricted during the time of the applicant's affiliation or membership
64 on the basis of race, religion, national origin, or sex. If affiliation with or membership in
65 a restrictive or discriminatory club or organization is disclosed, inquiry shall be made as
66 to whether the applicant intends to continue such affiliation or membership if selected to
67 serve on the bench.

68 (b) Inquire as to an applicant's medical status to determine whether he or she
69 is physically capable of performing judicial duties. Such inquiry shall include questions
70 regarding past and present history of drug or alcohol dependency and, if relevant,
71 participation in treatment and rehabilitative programs.

72 (c) Require complete financial disclosure from the

73 applicant.

74

75 **Section V. Standards and Qualifications; Criteria**

76 No nominee shall be recommended to the governor for appointment unless the
77 commission finds that the nominee meets all constitutional and statutory requirements
78 and is fit for appointment to the particular judicial office after full and careful
79 consideration which consideration shall include but not necessarily limited to the
80 following criteria:

81 (a) Personal attributes

82 (1) Personal integrity

83 (2) Standing in community

84 (3) Sobriety

85 (4) Moral conduct

86 (5) Ethics

87 (6) Commitment to equal justice under law

88 (b) Competency and experience

89 (1) General health, mental and physical

90 (2) Intelligence

91 (3) Knowledge of the law

92 (4) Professional reputation

93 (5) Knowledge of and experience in the court involved

94 (c) Judicial capabilities

95 (1) Patience

- 96 (2) Decisiveness
- 97 (3) Impartiality
- 98 (4) Courtesy
- 99 (5) Civility
- 100 (6) Industry and promptness
- 101 (7) Administrative ability
- 102 (8) Possible reaction to judicial power
- 103 (9) Temperament
- 104 (10) Independence

105

106 **Section VI. Final Selection of Nominees**

107 Upon conclusion of all investigation obtained by the commission, and after the
108 "most qualified" applicants have been afforded the opportunity of a personal interview
109 by the commission, the commission shall meet to evaluate the "most qualified"
110 applicants. By majority vote, the commission shall select from the list of "most qualified"
111 applicants who meet all legal requirements for the judicial office (no fewer than three
112 and no more than six nominees for each vacancy in the judicial office). The names of
113 such nominees selected by the commission shall be certified to the governor in
114 alphabetical order, and a copy of all investigative information and documents relating to
115 each such nominee shall be forwarded to the governor in a sealed container so that it is
116 received no later than thirty days from the occurrence of a vacancy, unless the period is
117 extended by the governor.

118

119 **Section VII. Publication of Names of Nominees**

120 The chair of the commission shall make public the names of all persons
121 recommended for gubernatorial appointment, without indicating any preference of the
122 commission.

123

124 **Section VIII. Ethical Responsibilities**

125 Judicial nominating commissioners hold positions of public trust. A
126 commissioner's conduct should not reflect discredit upon the judicial selection process
127 or disclose partisanship or partiality in the consideration of applicants. Consideration of
128 applicants shall be made impartially and objectively.

129 A commissioner shall disclose to all other commissioners present all personal
130 and business relationships with an applicant. If a substantial conflict of interest is
131 apparent, that commissioner shall not vote on further consideration of any affected
132 applicants. All balloting by the commission shall be by secret ballot and the chair shall
133 be entitled to vote in all instances. Upon certification of a list of nominees to the
134 governor, no commissioner shall contact the governor or any member of his office or
135 staff, for the purpose of further influencing the governor's ultimate decision. However, if
136 contacted by the governor, or his office or staff, a commissioner shall be entitled to
137 answer questions about each nominee. No attempt should be made to rank such
138 nominees or to otherwise disclose a preference of the commission.

139

140 **Section IX. Misconduct**

141 Each commissioner shall be accountable to the Governor, and the chair of their
142 commission for compliance with these rules and the proper performance of their duties
143 as a member of a judicial nominating commission. Each commissioner affirms that
144 under these rules the Governor, and/or the chair of their commission may dispose of
145 any written complaint alleging the misconduct of one or more commissioners or
146 commissions, limited only by Article IV, Section 7 of the Constitution of the State of
147 Florida. Each commissioner further acknowledges that pursuant to Article IV, Section 7
148 the Governor may suspend from office any commission member for malfeasance,
149 misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to
150 perform their official duties, or commission of a felony.

151 A complaint alleging the misconduct of one or more commissioners (other than
152 the chair) within a single judicial nominating commission shall be reported in writing to
153 the chair of the affected commission for action. Upon the chair's receipt of any such
154 charges, the subject commissioner(s) and the Governor shall be immediately notified
155 thereof and thereafter kept continuously apprised of their status through final
156 disposition. The chair shall investigate any complaint if the allegations are in writing,
157 signed by the complainant, and deemed sufficient. A complaint is sufficient if the chair
158 determines that it contains allegations which if proven would be a violation of these
159 rules or reflects discredit on the judicial selection process. Prior to determining
160 sufficiency the chair may require supporting information or documentation as necessary
161 for that determination. Upon determination of sufficiency each charge may be disposed
162 of by the chair solely, or may be referred by the chair for disposition by the Governor,
163 exclusively or with the concurrence of the chair, but in consultation with all other
164 members of the affected JNC who are not otherwise involved in the disposition.
165 Disposition of a complaint shall include a hearing which affords the opportunity for the
166 presentation of evidence to be evaluated by a clear and convincing standard of proof.
167 Action shall be taken within 60 days of receipt of any written complaint and its final
168 disposition shall be immediately reported.

169 A complaint alleging the sole misconduct of a judicial nominating commission
170 chair shall be reported in writing to the Governor for action. Upon the Governor's
171 receipt of any such charges, the subject chair shall be immediately notified thereof and
172 thereafter kept continuously apprised of their status through final disposition. The
173 Governor shall investigate any complaint if the allegations are in writing, signed by the

174 complainant, and deemed sufficient. A complaint is sufficient if the Governor
175 determines that it contains allegations which if proven would be a violation of these
176 rules or reflects discredit upon the judicial selection process. Prior to determining
177 sufficiency the Governor may require supporting information or documentation as
178 necessary for that determination. Upon determination of sufficiency, each charge shall
179 be disposed of by the Governor in consultation with all other members of the affected
180 JNC who are not otherwise involved in the disposition. Disposition of a complaint shall
181 include a hearing which affords the opportunity for the presentation of evidence to be
182 evaluated by a clear and convincing standard of proof. Action shall be taken within 60
183 days of receipt of any written complaint and its final disposition shall be immediately
184 reported.

185 A complaint alleging the misconduct of a judicial nominating commission chair
186 and one or more commissioners of a judicial nominating commission shall be reported
187 in writing to the Governor for action. Upon the Governor's receipt of any such charges,
188 the subject chair and commissioner(s) shall be immediately notified thereof and
189 thereafter kept continuously apprised of their status through final disposition. The
190 Governor shall investigate any complaint if the allegations are in writing, signed by the
191 complainant, and deemed sufficient. A complaint is sufficient if the Governor
192 determines that it contains allegations which if proven would be a violation of these
193 rules or reflects discredit on the judicial selection process. Prior to determining
194 sufficiency the Governor may require supporting information or documentation as
195 necessary for that determination. Upon determination of sufficiency each charge may
196 be disposed of by the Governor solely, but in consultation with all other members of the

197 affected JNC who are not otherwise involved in the disposition or the subjects of the
198 alleged misconduct. Disposition of a complaint shall include a hearing which affords the
199 opportunity for the presentation of evidence to be evaluated by a clear and convincing
200 standard of proof. Action shall be taken within 60 days of receipt of any written
201 complaint and its final disposition shall be immediately reported.

202

203 **Section X. Annual Meeting; Selection of Chair; Local Rules;**

204 **Safeguarding of Records**

205 Annually, after July 1st, the commission shall meet to elect by a majority vote a
206 chair. His or her term shall end on July 1 of the next succeeding year. The chair's term
207 shall not exceed one year. After July 1st and the appointment of all commission
208 vacancies by the Governor, the new commission shall meet to elect by majority vote a
209 vice chair who shall have at least two years remaining in his or her term. Each
210 commission shall certify the chair's name to the Governor. The vice chair shall
211 automatically be nominated for chair at the next annual election held. Additional
212 nominations of qualified persons for chair are allowed.

213 The chair shall keep a permanent written record of all policies and procedures
214 adopted by the commission during his or her term.

215 Each commission may adopt such additional operating rules, forms and notices
216 as it may from time to time deem necessary, so long as they are not inconsistent with
217 these rules. Each commission shall maintain continuous records of its proceedings. In
218 order that such records may be safeguarded, the commission after completing its
219 deliberations and submitting its recommendations to the Governor, shall place all

220 remaining applications, questionnaires and other investigative data in a file. The files
221 will be available on a continuous basis to the commission upon request, but the files
222 may be destroyed on a yearly basis.

223 At the conclusion of his or her term, the outgoing chair shall turn over to the
224 newly elected chair all written records of adopted policies and procedures.

225 Within the first twelve months of appointment, each JNC appointee must
226 complete an educational course designed to familiarize members with JNC rules and
227 procedures. Training shall include segments regarding interviewing techniques and
228 diversity sensitivity.

229

230 **Section XI. Amendments**

231 These rules may be amended by majority vote of the DCA Judicial Nominating
232 Commissions voting by an authorized representative.

233 Upon written request of 25% of all DCA judicial nominating commissions, a
234 meeting shall be convened within 90 days for the purpose of considering amendments
235 to these rules.

236

237 Note: These rules were promulgated by representatives from each of the District Courts
238 of Appeal Judicial Nominating Commissions, meeting in open session on January 24,
239 1985 in Miami. The rules were amended in open session on January 11, 1989 in
240 Orlando; April 3, 1992 in Tampa; January 29, 1993 in Tampa; December 7, 1994 in
241 Tampa; January 22, 1997 in Miami; and March 30, 2000 in Tampa; and June 25, 2003
242 in Orlando.

243

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**SUPREME COURT
JUDICIAL NOMINATING
COMMISSION
RULES OF PROCEDURE**

AS AMENDED NOVEMBER 7, 2002

(or designee) by each applicant prior to the deadline for filing applications. One copy of each application with attachments shall be forwarded by the chair to the Judicial Nominating Commission Coordinator, The Florida Bar, Tallahassee, Florida and one to the Judicial Nominating Commission Coordinator, General Counsel, Office of the Governor. The Commission shall require appropriate financial disclosure information as part of the application. The Commission may require such additional information as it deems appropriate.

The application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees, to the JNC Coordinator at The Florida Bar.

Section II. Initial Screening

Within a reasonable time after notice is given of the existence of a vacancy, the Commission shall meet to consider applicants and to select those applicants to be interviewed.

All applications, and other written information received from or concerning applicants, and all interviews and proceedings of the Commission, except for deliberations by the Commission, shall be open to the public to the extent required by law.

Section-III. Electronic Media and Still Photography Coverage

of Judicial Nominating Commission Proceedings

(a) Subject at all times to the authority of the chairperson of the commission to: (i) control the conduct of proceedings before the commission; (ii) ensure decorum and prevent distractions; and (iii) ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of the open commission proceedings shall be allowed in accordance with the following rule.

(b) Equipment and Personnel.

(1) Not more than 1 portable television camera (film camera -- 16mm sound on film (self blimped) or videotape electronic camera), operated by not more than 1 camera person, shall be permitted in any open commission proceeding.

(2) Not more than 1 still photographer, using not more than 2 still cameras with not more than 2 lenses for each camera and related equipment for print purposes, shall be permitted in any open commission proceeding.

(3) Not more than 1 audio system for radio broadcast purposes shall be permitted in any open commission proceeding. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the commission meeting place. If no technically suitable audio system exists in the commission meeting place, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the chairperson in which the commission proceeding is located.

(4) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the chairperson of the commission to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular

proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the chairperson of the commission shall exclude all contesting media personnel from a proceeding.

(c) Sound and Light Criteria.

(1) Only television photographic and audio equipment that does not produce distracting sound or light shall be used to cover open commission proceedings. Specifically, such photographic and audio equipment shall produce no greater sound or light than the equipment designated in the Appendix to this rule, when such designated equipment is in good working order. No artificial lighting device of any kind shall be used in connection with the television camera.

(2) Only still camera equipment that does not produce distracting sound or light shall be used to cover open commission proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a 35mm Leica "M" Series Rangefinder camera, and no artificial lighting device of any kind shall be used in connection with a still camera.

(3) It shall be the affirmative duty of media personnel to demonstrate to the chairperson of the commission adequately in advance of any proceeding that the equipment sought to be used meets the sound and light criteria enunciated in this rule. A failure to obtain advance approval for equipment shall preclude its use in the proceeding.

(d) Location of Equipment Personnel.

(1) Television camera equipment shall be positioned in such location in the meeting place of the commission as shall be designated by the chairperson. The area designated shall provide reasonable access to coverage. If and when areas remote

from the commission proceedings permit reasonable access to coverage are provided, all television camera and audio equipment shall be positioned only in such area. Videotape recording equipment that is not a component part of a television camera shall be located in an area remote from the commission proceedings.

(2) A still camera photographer shall position himself or herself in such location in the meeting place of the commission as shall be designated by the chairperson. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once established in a shooting position, shall act so as not to call attention to themselves through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of the commission proceedings.

(3) Broadcast media representatives shall not move about the meeting place of the commission while proceedings are in session, and microphones or taping equipment once positioned as required by subdivision (a)(3) shall not be moved during the pendency of the proceeding.

(e) Movement During Proceedings. News media photographic or audio equipment shall not be placed in or removed from the meeting place of the commission except before commencement or after adjournment of proceedings each day, or during a recess. Neither television film magazines nor still camera film or lenses shall be changed within the meeting place of the commission except during a recess in the proceeding.

(f) Commission Meeting Place Light Sources. With the concurrence of the chairperson of the commission in which the meeting is situated, modifications and additions may be made in light sources existing in the commission meeting place,

provided such modifications or additions are installed and maintained without public expense and removed immediately, following the commission proceeding, all light sources returned to their original condition.

APPENDIX

FILM CAMERAS.....			16mm Sound of Film (self blimped)
1.	Cinema Products	CP-16A-R	Sound Camera
2.	Arriflex	16mm-16BL Model	Sound Camera
3.	Frezzolini	16mm (LW16)	Sound on Film Camera
4.	Auricon	"Cini-Voice"	Sound Camera
5.	Auricon	"Pro-600"	Sound Camera
6.	General Camera	SS III	Sound Camera
7.	Eclair	Model ACL	Sound Camera
8.	General Camera	DGX	Sound Camera
9.	Wilcam Reflex	16mm	Sound Camera

VIDEOTAPE ELECTRONIC CAMERAS

1.	Ikegami	HL-77 HL-33 HL-35 HL-34 HL-51
2.	RCA	TK 76
3.	Sony	DXC-1600 Trinicon
4.	ASACA	ACC-2006
5.	Hitachi	SK 80 SK 90
6.	Hitachi	FP-3030
7.	Philips	LDK-25

- | | | |
|-----|--------------|-----------------|
| 8. | Sony BVP-200 | ENG Camera |
| 9. | Fernseh | Video Camera |
| 10. | JVC-8800u | ENG Camera |
| 11. | AKAI | CVC-150 VTS-150 |
| 12. | Panasonic | WV-308 NV-3085 |
| 13. | JVC | GC-4800u |

VIDEOTAPE RECORDERS/used with video cameras

- | | | |
|----|-----------|-----------------------|
| 1. | Ikegami | 3800 |
| 2. | Sony | 3800 |
| 3. | Sony | BVU-100 |
| 4. | Ampex | Video Recorder |
| 5. | Panasonic | 1 inch Video Recorder |
| 6. | JVC | 4400 |
| 7. | Sony | 3800H |

Section IV. Further Investigation; Interviews

Upon selection by the Commission of the applicants to be interviewed, the Commission shall further investigate the fitness and qualifications of each such applicant, utilizing all sources reasonably available within the time permitted by law. The Commission shall invite each such selected applicant to appear before a quorum of the Commission sitting as a whole to respond to questions by the Commission designed to determine the fitness of the applicant to serve on the Supreme Court, to serve as Statewide Prosecutor, or to serve as Capital Collateral Regional Counsel, as the case may be.

Prior to the interview of any applicant, each Commission member shall disclose to the remaining Commission members all negative information received by such member concerning any applicant.

At any time before its final vote is concluded, the Commission may request an applicant to reappear before the Commission to answer additional questions and to provide additional information.

Section V. Standards and Qualifications; Criteria

No person shall be recommended to the Governor or to the Attorney General for appointment unless the Commission finds such applicant to be fit for appointment after full and careful consideration. Consideration of applicants for appointment to the Supreme Court shall include, but not necessarily be limited to, the following criteria;

- (a) Applicable statutory criteria
- (b) Personal attributes
 - (1) Personal integrity
 - (2) Standing in community
 - (3) Sobriety
 - (4) Moral conduct
 - (5) Ethics
 - (6) Commitment to equal justice under law
- (c) Competency and experience
 - (1) General health
 - (2) Physical disabilities
 - (3) Intelligence
 - (4) Knowledge of the law and judicial system

- (5) Professional reputation
- (6) Knowledge and experience of the Supreme Court
- (7) Meets legal judicial requirements
- (d) Judicial capabilities
 - (1) Patience
 - (2) Decisiveness
 - (3) Impartiality
 - (4) Courtesy
 - (5) Civility
 - (6) Industry and promptness
 - (7) Administrative ability
 - (8) Possible reaction to judicial power
 - (9) Temperament
 - (10) Independence

To the extent applicable, such criteria shall also be considered with relation to applicants for the position of Statewide Prosecutor and for the position of Capital Collateral Regional Counsel. Every application shall be reviewed to determine that the applicant meets all constitutional and statutory requirements; including Section 16.56, F.S. for Statewide Prosecutor, and Section 27.701, F.S. for Capital Collateral Regional Counsels.

Section VI. Final Selection of Nominees

Upon conclusion of all investigation reasonably conducted and obtained by the Commission and after the procedures set forth in Section IV have been completed, the

Commission shall meet to select by majority vote qualified nominees from those persons having applied for such vacancy. For each vacancy on the Florida Supreme Court the commission shall select not less than three (3) but not more than six (6) nominees. For a vacancy in the office of Statewide Prosecutor or a vacancy in any office of Capital Collateral Regional Counsel the Commission shall select three (3) nominees. The Commission shall complete its work within thirty (30) days from the occurrence of the vacancy, unless the period is extended by the Governor. The names of nominees selected and recommended by the Commission for appointment to the Supreme Court shall be certified to the Governor in alphabetical order and a copy of all written investigative information and documents relating to each such nominee shall be furnished therewith. The names of such three (3) nominees selected and recommended by the Commission for appointment to the Office of the Statewide Prosecutor shall be certified to the Attorney General of the State of Florida in alphabetical order and a copy of all investigative information and documents relating to each such nominee shall be furnished therewith. The names of such three (3) nominees selected and recommended by the Commission for appointment as Capital Collateral Regional Counsel shall be certified to the Governor in alphabetical order and a copy of all investigative information and documents relating to each such nominee shall be furnished therewith.

Section VII. Procedure for Final Voting

1. Final voting procedures to nominate to the Governor or to the Attorney General qualified applicants from those interviewed will take place:
 - (a) After the Commissioners have had an opportunity to review the

- applications, supporting data, and all other pertinent information;
- (b) After the applicants selected by the Commission to be interviewed have been interviewed to the satisfaction of a majority of the Commission members;
 - (c) After the applicants have been discussed to the satisfaction of a majority of the Commission members; and
 - (d) Without any straw vote, unofficial vote, tentative vote, or official vote until the above-described steps have been taken, except that this limitation shall not apply to a screening process to reduce the number of applicants to be interviewed.
2. All votes shall be cast by written, secret ballot. On the initial round of voting each Commissioner shall cast six (6) votes, one per applicant. Any applicant who receives two (2) votes shall continue to the next round of voting.
 3. On each successive round(s) of voting, the number of votes cast by each Commissioner shall be reduced by one (1) and the minimum required to remain on the proposed list shall be raised by one (1) vote.
 4. This process shall continue until only three (3) applicants remain on the list or, if there is a tie for third place, more than three (3) shall be permitted so long as it is less than six (6). If there are more than six (6) then there will be a vote among those tied for third place with each Commissioner casting one (1) vote and only the person who receives the most votes shall remain on the proposed list.
 5. Following completion of the initial round of voting, any Commissioner can then move to reconsider an applicant who did not make the initial proposed list. If the motion is seconded, the Commission shall vote to reconsider the applicant.

Once the list of all persons for reconsideration has been determined, the Commission shall then vote on the list of persons being reconsidered. For that ballot, the number of potential votes each Commissioner may cast will be determined by subtracting the number of applicants already on the proposed list from the number of six (6). No Commissioner shall be required to vote but may cast up to the number of votes as determined above not to exceed one vote per applicant. Any applicant who receives at least five votes shall be added to the proposed list until there are not more than six (6) applicants on the proposed list.

If there is a tie for the last position, then the Commissioner shall vote on the tied applicants with each Commissioner casting one (1) vote, and the applicant with the most votes will be added to the proposed list.

6. After the proposed list is complete, any Commissioner may make a motion to remove anyone on the list. If it is seconded, a vote shall be cast on the applicant, with each Commissioner casting one (1) vote. If a majority of the Commissioners eligible to vote, vote in favor of the motion, the applicant shall be removed from the list.
7. Finally, a motion to declare the list final shall be made, seconded and if it receives a majority vote of the Commissioners, the final list shall then be complete and those names shall be submitted to the Governor.

Section VIII. Publication of Names of Nominees

The chair of the Commission shall make public the names of all persons recommended by the Commission for appointment by the Governor or by the Attorney General without indicating any preference of the Commission.

Section IX. Ethical Considerations

Judicial Nominating Commissioners hold positions of public trust. A Commissioner's conduct should not reflect discredit upon the judicial selection process or disclose partisanship or partiality in the consideration of applicants. Accordingly, a Commissioner shall not become an advocate for any applicant. Consideration of applicants shall be made impartially, and objectively.

A Commissioner shall disclose to other Commissioners present all personal, professional and business relationships with an applicant. In the event any applicant is a member of the judiciary, each member of the Commission shall disclose to the Commission all matters which he, she, or any of his or her clients have pending before such applicant. If a substantial conflict of interest is apparent, that Commissioner shall not vote on further consideration of any applicants so long as the applicant creating the conflict is under consideration during the selection of the initial three (3) nominees. In addition, the Commissioner shall not participate in the selection of any additional nominees so long as the applicant creating the conflict is eligible for consideration. The chair shall rule upon whether a substantial conflict of interest exists. All balloting by the Commission shall be by secret ballot and the chair shall be entitled to vote in all instances. Upon certification of the nominees to the Governor or to the Attorney General, no Commissioner shall contact the Governor or the Attorney General or any member of their offices or staffs, for the purpose of further influencing the Governor's or Attorney General's ultimate decision. However, if contacted by the Governor or Attorney General, or their offices or staffs, a Commissioner shall be entitled to answer questions

about each nominee. No attempt should be made to rank nominees or to otherwise disclose a preference of the Commission.

Section X. Misconduct

Each Commissioner shall be accountable to the Governor, their appointing authority and the chair for compliance with these rules and the proper performance of their duties as a member of the Commission. Each Commissioner affirms that under these rules the Governor, their appointing authority or the chair may dispose of any written complaint alleging the misconduct of one or more Commissioners or of the Commission, limited only by Article IV, Section 7 of the Constitution of the State of Florida. Each Commissioner further acknowledges that pursuant to Article IV, Section 7 of the Constitution the Governor may suspend from office any Commission member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform their official duties, or commission of a felony.

A complaint alleging the misconduct of one or more Commissioners (other than the chair) shall be reported in writing to the chair for action. Upon the chair's receipt of any such charges, the subject Commissioner(s) and the appointing authority of the subject Commissioner(s) shall be immediately notified thereof and thereafter kept continuously apprised of the status of such complaint through final disposition. The chair shall investigate any complaint if the allegations are in writing, signed by the complainant, and deemed sufficient by the chair. A complaint shall be deemed sufficient if the chair determines that it contains allegations which if proven would be a violation of these rules or reflects discredit on the judicial selection process. Prior to determining sufficiency the chair may require supporting information or documentation

as necessary for that determination. Upon determination of sufficiency, each charge: (a) may be disposed of by the chair solely; or, (b) may be referred by the chair for disposition by the appointing authority of the subject Commissioner exclusively, or with the concurrence of the chair, but in consultation with the Governor, the appointing authority of the subject Commissioner, and all other members of the Commission. Disposition of a complaint shall include a hearing which affords the opportunity for the presentation of evidence by all interested parties to be evaluated by a clear and convincing standard of proof. Action shall be taken within 60 days of receipt of any written complaint and its final disposition shall be immediately reported to the appointing authority, the chair and the Governor.

A complaint alleging the misconduct only of the chair shall be reported in writing to the appointing authority of the chair for action. Upon the appointing authority's receipt of any such charges, the chair shall be immediately notified thereof and thereafter kept continuously apprised of his or her status through final disposition. The appointing authority shall investigate any complaint if the allegations are in writing, signed by the complainant, and deemed sufficient. A complaint shall be deemed sufficient if the appointing authority determines that it contains allegations which if proven would be a violation of these rules or reflects discredit upon the judicial selection process. Prior to determining sufficiency the appointing authority may require supporting information or documentation as necessary for that determination. Upon determination of sufficiency, each charge shall be disposed of by the appointing authority, with the concurrence of the Governor when not otherwise involved as appointing authority, and in consultation with all other members of the Commission. Disposition of a complaint shall include a hearing which affords the opportunity for the

presentation of evidence by all interested parties to be evaluated by a clear and convincing standard of proof. Action shall be taken within 60 days of receipt of any written complaint and its final disposition shall be immediately reported to the Commission, the appointing authority and the Governor.

A complaint alleging the misconduct of the chair and one or more Commissioners shall be reported in writing to the Governor for action. Upon the Governor's receipt of any such charges, the chair and Commissioner(s) shall be immediately notified thereof and thereafter kept continuously apprised of their status through final disposition. The Governor shall investigate any complaint if the allegations are in writing, signed by the complainant, and deemed by the Governor to be sufficient. A complaint shall be deemed sufficient if the Governor determines that it contains allegations which if proven would be a violation of these rules or would reflect discredit on the judicial selection process. Prior to determining sufficiency the Governor may require supporting information or documentation as necessary for that determination. Upon determination of sufficiency each charge may be disposed of by the Governor solely, or may be referred by the Governor for disposition by the appointing authority of the chair or Commissioner, exclusively or with the concurrence of the Governor, but in consultation with both the appointing authority of the chair or Commissioner and with all other members of the Commission. Disposition of a complaint shall include a hearing which affords the opportunity for the presentation of evidence by all interested parties to be evaluated by a clear and convincing standard of proof. Action shall be taken within 60 days of receipt of any written complaint and its final disposition shall be immediately reported by the Governor to the appointing authority and members of the Commission.

Section XI. Annual Meeting; Selection of Chair; Local Rules; Safeguarding of

Records

Annually, after July 1, the Commission shall designate a chair by majority vote to serve for one year and shall certify his or her name to the Governor. The chair's term shall end on July 1 of the next succeeding year or upon the election of his or her succession in office. The chair may be reappointed. After July 1st and the appointment of all Commission vacancies by the Governor and Board of Governors, the new Commission shall meet to elect by majority vote a vice chair who shall have at least two years remaining in their term. The vice chair shall automatically be nominated for chair at the next annual election held. Additional nominations of qualified persons for chair are allowed.

Within the first twelve months of appointment, each JNC appointee must complete an educational course designed to familiarize members with JNC rules and procedures. Training shall include segments regarding interviewing techniques and diversity sensitivity.

The Florida Bar (through its JNC Coordinator or other appropriate designated officer or employee) shall be the official depository and custodian of the records of the Commission.

The chair shall keep a permanent written record of all policies and procedures adopted by the Commission during his or her term and shall send a copy to the JNC Coordinator at The Florida Bar.

The Commission may adopt such additional operating rules, forms and notices as it may from time to time deem necessary, so long as they are not inconsistent with these rules. The Commission shall maintain continuous records of its proceedings. In

order that such records may be safeguarded, the Commission after completing its deliberations and submitting its recommendations to the Governor, shall place all remaining applications, questionnaires and other investigative data in a file, sealed by the chair, and transmit the same to the office of The Florida Bar. Minutes of each meeting affecting the official formal actions taken by the Commission shall be prepared and signed by the chair. The same shall be delivered to the Florida Bar where the same shall be preserved in a permanent file. The files will be available on a continuous basis to the Commission upon request, but the files may be destroyed on a yearly basis.

At the conclusion of the chair's term, the files of all written records of adopted policies and procedures shall be turned over to the newly elected chair. A copy of the same shall be permanently retained by the Florida Bar.

Section XII. Amendments

These rules may be amended by majority vote of the members of the Commission.

**IV. GUIDELINES OF OPERATION OF THE
STATEWIDE JUDICIAL NOMINATING
COMMISSION**

**GUIDELINES OF OPERATION OF
THE STATEWIDE JUDICIAL
NOMINATING COMMISSION**

GUIDELINES OF OPERATION OF THE STATEWIDE NOMINATING COMMISSION

Section I. Initial Procedure; Investigative Sources; Notice

Whenever a judicial vacancy occurs in the Office of the Judges of Compensation Claims, the Statewide Judicial Nominating Commission (hereafter “the Commission”) shall actively seek, receive and review the applications of interested attorneys. The Commission shall also receive and review the applications of Judges of Compensation Claims who seek reappointment. The Commission shall require completion of the application form, which shall include a waiver of confidentiality of all material necessary to adequately investigate each applicant, including but not limited to, disciplinary records of The Florida Bar, records of the Florida Board of Bar Examiners, credit records, records maintained by any law enforcement agency, and records of the Florida Judicial Qualifications Commission (to the extent same are available). This waiver shall not extend to waive any specific privacy right of an applicant as regards the general public.

The application for initial appointment or reappointment shall be submitted to each Commissioner no later than 21 days prior to the Commission meeting at which an applicant for appointment or reappointment will be considered. The Chair of the Commission shall make public the names of all applicants for any position.

Persons seeking to comment upon any applicant for appointment or reappointment shall notify the Chair no later than 14 days prior to the Commission meeting at which an applicant for appointment or reappointment will be considered. Letters supporting or opposing nomination may be sent by the public to the Commissioners. The OJCC shall broadcast an announcement to all registered OJCC e-filers to inform them if someone has notified the Commission of an intent to oppose a nomination. Upon such announcement, anyone interested in appearing in support of or in opposition to that Judge or candidate must notify the Commission no later than 7 days prior to the scheduled meeting. The decision of how many may speak in support of or opposition to the candidate remains with the Commission.

The Commission shall notify The Florida Bar, and utilize electronic media to publicize the occurrence of the Commission meetings, the existence of vacancies, and the consideration of any judge’s reappointment application. The Commission may seek and shall receive information from interested persons and groups.

Section II. Screening Procedures

Within a reasonable time after notice is given of the existence of the vacancy or impending expiration of the term of a judge of compensation claims, the Commission shall meet to consider applicants. At this meeting the procedures for screening the applicants for said vacancy shall be determined. This initial meeting regarding screening may be held by telephone. In the event it is held telephonically, the public may listen to the call but may address the Commission only if recognized by the chair.

Section III. Electronic Media and Still Photography Coverage of Judicial Nominating Commission Proceedings

Subject at all times to the authority of the chairperson of the Commission to: (i) control the conduct of proceedings before the Commission; (ii) ensure decorum and prevent distractions; and (iii) ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of the open Commission proceedings shall be allowed in accordance with Judicial Administrative Rule 2.450.

Section IV. Further Investigation; Interviews

The Commission shall investigate the fitness and qualifications of each applicant, utilizing all sources reasonably available within the time permitted. In addition, the Commission may invite any applicant to appear before a quorum of the Commission sitting as a whole to respond to questions deemed pertinent to each applicant's fitness and qualifications to hold the judicial office. All applications, and other information received from or concerning applicants, and all interviews and proceedings of the Commission, shall be open to the public to the extent required by the Florida Constitution or Florida Statutes. The application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees, to the JNC Coordinator in the Governor's Office. At a point in the investigative and interview process deemed appropriate by the Commission, the Commission may require financial disclosure from the applicant.

Section V. Standards and Qualifications; Criteria

No nominee shall be recommended to the Governor for appointment unless the Commission finds that the nominee meets all constitutional and statutory requirements and is fit for appointment after full and careful consideration which consideration may include, but not necessarily limited to, the following criteria:

(a) Personal attributes

- (1) Personal integrity
- (2) Standing in community
- (3) Sobriety
- (4) Moral conduct
- (5) Ethics
- (6) Commitment to equal justice under law

(b) Competency and experience

- (1) General health, mental and physical
- (2) Intelligence
- (3) Knowledge of the law
- (4) Professional Reputation
- (5) Knowledge of and experience in the court involved

(c) Judicial capabilities

- (1) Patience
- (2) Decisiveness
- (3) Impartiality
- (4) Courtesy
- (5) Civility
- (6) Industry and promptness
- (7) Administrative ability
- (8) Possible reaction to judicial power
- (9) Temperament
- (10) Independence

Section VI. Final Selection of Nominees

When nominating candidates to fill a vacancy, by majority vote, the Commission shall select three nominees from the list of applicants who meet the requirements Chapter 440 and all other legal requirements for Judge of Compensation Claims. The names of such nominees selected by the Commission shall be certified to the Governor in alphabetical order, and a copy of all investigative information and documents relating to each such nominee shall be forwarded to the Governor.

When considering a Judge for reappointment, by majority vote, the Commission shall vote upon whether to recommend each particular judge for reappointment. The names of each judge considered by the Commission shall be certified to the Governor in writing, which shall include only the judge's name and whether recommended or not.

A quorum of the Commission shall be eight (8) commissioners. When considering candidates for recommendation or a Judge for reappointment, the commissioners will meet in person. Upon a vote of the commissioners, a Commissioner may be permitted to attend the meeting by electronic means and vote.

All votes shall be cast by written ballot (with any Commissioner attending electronically submitting that vote to the Chair by email).

When considering reappointment of a Judge, each commissioner shall vote yes or no. A tie vote will not stand. If the Commission cannot reach a majority decision on reappointment, the Commission shall vote at that meeting until a majority decision is reached. If, after due consideration and due efforts to reach a majority decision, the Commission remains deadlocked with a tie vote, such result will be communicated to the Governor as the Commission not recommending reappointment.

When considering candidates for a vacant position, and more than 10 candidates apply for the vacancy, the initial round of voting shall have each Commissioner cast six (6) votes, one per applicant (no cumulative voting). When considering 10 or fewer candidates for a vacant position, the initial round of voting shall have each Commissioner cast three (3) votes, one per applicant (no cumulative voting). Any applicant who receives two (2) votes shall continue to the next round of voting.

On each successive round(s) of voting, the number of votes cast by each Commissioner shall be reduced by one (1) and the minimum required to remain on the proposed list shall be raised by one (1) vote.

This process shall continue until only three (3) applicants remain on the list. If there is a tie for third place, then there will be a vote among those tied for third place with each Commissioner casting one (1) vote and only the person who receives the most votes shall remain on the proposed list.

Section VII. Publication of Names of Nominees

The chairperson of the Commission shall make public the names of all persons recommended for gubernatorial appointment in alphabetical order by last name, without indicating any preference of the commission. This information shall be reported to the Governor without comment other than the names of those recommended in alphabetical order.

Section VIII. Ethical Responsibilities

Judicial nominating Commissioners hold positions of public trust. A Commissioner's conduct should not reflect discredit upon the judicial selection process or disclose partisanship or partiality in the consideration of applicants. Consideration of applicants shall be made impartially and objectively. A Commissioner shall disclose to all other Commissioners present all personal and business relationships with an applicant. If a substantial conflict of interest is apparent, that Commissioner shall not vote on further consideration of any affected applicants. A Commissioner shall declare any conflict of interest that he/she has. Alternatively, upon motion by any Commissioner, a majority of all of the Commissioners may declare that a commissioner has a conflict of interest. The affected Commissioner may vote on the motion. All balloting by the Commission shall be by secret ballot and the chair shall be entitled to vote in all instances, unless the chair has a conflict of interest and has recused him/herself from voting. Upon certification of a list of nominees to the Governor, no Commissioner shall contact the Governor or any member of her or his office or staff, for the purpose of further influencing the Governor's ultimate decision. No attempt should be made to rank such nominees or to otherwise disclose a preference of the Commission. However, if contacted by the Governor, or

her/his office or staff, a Commissioner shall be entitled to answer questions about each nominee.

Section X. Annual Meeting; Selection of Chairperson

In February each year or as soon thereafter as practicable, the commission shall designate a chairperson by majority vote to serve for one year. The chairperson shall be entitled to vote in all matters, unless the chair has a conflict of interest and has recused him/herself from voting. His or her term shall end upon election of a successor the next succeeding year. The commission shall also elect by majority vote a vice chairperson who shall have at least one year remaining in his or her term. The chairperson shall keep a permanent written record of the minutes of all meetings of the commission, and all policies and procedures adopted by the commission, and all policies and procedures adopted by the commission during his or her term. The chairperson may delegate the responsibility for these actions to another commissioner. At the conclusion of his or her term the outgoing chairperson shall turn over to the newly elected chairperson all minutes of meetings and written records of adopted policies and procedures. The commission may adopt such additional operating rules, forms and notices as it may from time to time deem necessary, so long as they are not inconsistent with these rules.

Section XI. Election of Commissioners

Whenever a vacancy occurs for a Commissioner appointed by the Commission, the Commission shall advertise such vacancy within the notice of the next Commission meeting. The Commission may vote upon such application(s) at the next scheduled Commission meeting, or at any meeting thereafter. Election of Commission appointed Commissioners shall be by simple majority vote.

Section XII. Amendments

These guidelines may be amended by majority vote of the nominating commission,. These guidelines become effective __01/23/2012_____, and may be readopted periodically at the discretion of the Commission members

V. RULES GOVERNING JUDGES

1 **Preamble**
2
3

4 Our legal system is based on the principle that an independent, fair and competent
5 judiciary will interpret and apply the laws that govern us. The role of the judiciary is
6 central to American concepts of justice and the rule of law. Intrinsic to all sections of this
7 Code are the precepts that judges, individually and collectively, must respect and honor
8 the judicial office as a public trust and strive to enhance and maintain confidence in our
9 legal system. The judge is an arbiter of facts and law for the resolution of disputes and a
10 highly visible symbol of government under the rule of law.

11
12 The Code of Judicial Conduct establishes standards for ethical conduct of judges. It
13 consists of broad statements called Canons, specific rules set forth in Sections under
14 each Canon, a Definitions Section, an Application Section and Commentary. The text of
15 the Canons and the Sections, including the Definitions and Application Sections, is
16 authoritative. The Commentary, by explanation and example, provides guidance with
17 respect to the purpose and meaning of the Canons and Sections. The Commentary is
18 not intended as a statement of additional rules. When the text uses "shall" or "shall not,"
19 it is intended to impose binding obligations the violation of which, if proven, can result in
20 disciplinary action. When "should" or "should not" is used, the text is intended as
21 hortatory and as a statement of what is or is not appropriate conduct but not as a
22 binding rule under which a judge may be disciplined. When "may" is used, it denotes
23 permissible discretion or, depending on the context, it refers to action that is not covered
24 by specific proscriptions.

25
26 The Canons and Sections are rules of reason. They should be applied consistent with
27 constitutional requirements, statutes, other court rules and decisional law and in the
28 context of all relevant circumstances. The Code is not to be construed to impinge on the
29 essential independence of judges in making judicial decisions.

30
31 The Code is designed to provide guidance to judges and candidates for judicial office
32 and to provide a structure for regulating conduct through disciplinary agencies. It is not
33 designed or intended as a basis for civil liability or criminal prosecution. Furthermore,
34 the purpose of the Code would be subverted if the Code were invoked by lawyers for
35 mere tactical advantage in a proceeding.

36
37 The text of the Canons and Sections is intended to govern conduct of judges and to be
38 binding upon them. It is not intended, however, that every transgression will result in
39 disciplinary action. Whether disciplinary action is appropriate, and the degree of
40 discipline to be imposed, should be determined through a reasonable and reasoned
41 application of the text and should depend on such factors as the seriousness of the
42 transgression, whether there is a pattern of improper activity and the effect of the
43 improper activity on others or on the judicial system.

44
45 The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of
46 judges. They should also be governed in their judicial and personal conduct by general

1 ethical standards. The Code is intended, however, to state basic standards which
2 should govern the conduct of all judges and to provide guidance to assist judges in
3 establishing and maintaining high standards of judicial and personal conduct.
4
5

1 **Definitions**
2
3

4 "Appropriate authority" denotes the authority with responsibility for initiation of
5 disciplinary process with respect to the violation to be reported.
6

7 "Candidate." A candidate is a person seeking selection for or retention in judicial office
8 by election or appointment. A person becomes a candidate for judicial office as soon as
9 he or she makes a public announcement of candidacy, opens a campaign account as
10 defined by Florida law, declares or files as a candidate with the election or appointment
11 authority, or authorizes solicitation or acceptance of contributions or support. The term
12 "candidate" has the same meaning when applied to a judge seeking election or
13 appointment to nonjudicial office.
14

15 "Court personnel" does not include the lawyers in a proceeding before a judge.
16

17 "De minimis" denotes an insignificant interest that could not raise reasonable question
18 as to a judge's impartiality.
19

20 "Economic interest" denotes ownership of a more than de minimis legal or equitable
21 interest, or a relationship as officer, director, advisor, or other active participant in the
22 affairs of a party, except that:
23

24 (i) ownership of an interest in a mutual or common investment fund that holds securities
25 is not an economic interest in such securities unless the judge participates in the
26 management of the fund or a proceeding pending or impending before the judge could
27 substantially affect the value of the interest;
28

29 (ii) service by a judge as an officer, director, advisor, or other active participant in an
30 educational, religious, charitable, fraternal, sororal, or civic organization, or service by a
31 judge's spouse, parent, or child as an officer, director, advisor, or other active participant
32 in any organization does not create an economic interest in securities held by that
33 organization;
34

35 (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a
36 mutual insurance company, of a depositor in a mutual savings association, or of a
37 member in a credit union, or a similar proprietary interest, is not an economic interest in
38 the organization unless a proceeding pending or impending before the judge could
39 substantially affect the value of the interest;
40

41 (iv) ownership of government securities is not an economic interest in the issuer unless
42 a proceeding pending or impending before the judge could substantially affect the value
43 of the securities.
44

45 "Fiduciary" includes such relationships as personal representative, administrator,
46 trustee, guardian, and attorney in fact.

1 "Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against,
2 particular parties or classes of parties, as well as maintaining an open mind in
3 considering issues that may come before the judge.
4

5 "Judge." When used herein this term means Article V, Florida Constitution judges and,
6 where applicable, those persons performing judicial functions under the direction or
7 supervision of an Article V judge.
8

9 "Knowingly," "knowledge," "known," or "knows" denotes actual knowledge of the fact in
10 question. A person's knowledge may be inferred from circumstances.
11

12 "Law" denotes court rules as well as statutes, constitutional provisions, and decisional
13 law.
14

15 "Member of the candidate's family" denotes a spouse, child, grandchild, parent,
16 grandparent, or other relative or person with whom the candidate maintains a close
17 familial relationship.
18

19 "Member of the judge's family" denotes a spouse, child, grandchild, parent,
20 grandparent, or other relative or person with whom the judge maintains a close familial
21 relationship.
22

23 "Member of the judge's family residing in the judge's household" denotes any relative of
24 a judge by blood or marriage, or a person treated by a judge as a member of the judge's
25 family, who resides in the judge's household.
26

27 "Nonpublic information" denotes information that, by law, is not available to the public.
28 Nonpublic information may include but is not limited to: information that is sealed by
29 statute or court order, impounded or communicated in camera; and information offered
30 in grand jury proceedings, presentencing reports, dependency cases, or psychiatric
31 reports.
32

33 "Political organization" denotes a political party or other group, the principal purpose of
34 which is to further the election or appointment of candidates to political office.
35

36 "Public election." This term includes primary and general elections; it includes partisan
37 elections, nonpartisan elections, and retention elections.
38

39 "Require." The rules prescribing that a judge "require" certain conduct of others are, like
40 all of the rules in this Code, rules of reason. The use of the term "require" in that context
41 means a judge is to exercise reasonable direction and control over the conduct of those
42 persons subject to the judge's direction and control.
43

44 "Third degree of relationship." The following persons are relatives within the third
45 degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother,
46 sister, child, grandchild, great-grandchild, nephew, or niece.
47

1 **Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary**
2
3

4 An independent and honorable judiciary is indispensable to justice in our society. A
5 judge should participate in establishing, maintaining, and enforcing high standards of
6 conduct, and shall personally observe those standards so that the integrity and
7 independence of the judiciary may be preserved. The provisions of this Code should be
8 construed and applied to further that objective.
9

10 COMMENTARY
11

12 Deference to the judgments and rulings of courts depends upon public confidence in the
13 integrity and independence of judges. The integrity and independence of judges depend
14 in turn upon their acting without fear or favor. Although judges should be independent,
15 they must comply with the law, including the provisions of this Code. Public confidence
16 in the impartiality of the judiciary is maintained by the adherence of each judge to this
17 responsibility. Conversely, violation of this Code diminishes public confidence in the
18 judiciary and thereby does injury to the system of government under law.
19

1 **Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in**
2 **all of the Judge's Activities**

3
4
5 A. A judge shall respect and comply with the law and shall act at all times in a manner
6 that promotes public confidence in the integrity and impartiality of the judiciary.

7
8 B. A judge shall not allow family, social, political or other relationships to influence the
9 judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office
10 to advance the private interests of the judge or others; nor shall a judge convey or
11 permit others to convey the impression that they are in a special position to influence
12 the judge. A judge shall not testify voluntarily as a character witness.

13
14 C. A judge should not hold membership in an organization that practices invidious
15 discrimination on the basis of race, sex, religion, or national origin. Membership in a
16 fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a
17 violation of this provision.

18
19
20 COMMENTARY

21
22 Canon 2A. Irresponsible or improper conduct by judges erodes public confidence in the
23 judiciary. A judge must avoid all impropriety and appearance of impropriety. A judge
24 must expect to be the subject of constant public scrutiny. A judge must therefore accept
25 restrictions on the judge's conduct that might be viewed as burdensome by the ordinary
26 citizen and should do so freely and willingly. Examples are the restrictions on judicial
27 speech imposed by Sections 3B(9) and (10) that are indispensable to the maintenance
28 of the integrity, impartiality, and independence of the judiciary.

29
30 The prohibition against behaving with impropriety or the appearance of impropriety
31 applies to both the professional and personal conduct of a judge. Because it is not
32 practicable to list all prohibited acts, the proscription is necessarily cast in general terms
33 that extend to conduct by judges that is harmful although not specifically mentioned in
34 the Code. Actual improprieties under this standard include violations of law, court rules,
35 or other specific provisions of this Code. The test for appearance of impropriety is
36 whether the conduct would create in reasonable minds, with knowledge of all the
37 relevant circumstances that a reasonable inquiry would disclose, a perception that the
38 judge's ability to carry out judicial responsibilities with integrity, impartiality, and
39 competence is impaired.

40
41 See also Commentary under Section 2C.

42
43 Canon 2B. Maintaining the prestige of judicial office is essential to a system of
44 government in which the judiciary functions independently of the executive and
45 legislative branches. Respect for the judicial office facilitates the orderly conduct of
46 legitimate judicial functions. Judges should distinguish between proper and improper

1 use of the prestige of office in all of their activities. For example, it would be improper for
2 a judge to allude to his or her judgeship to gain a personal advantage such as
3 deferential treatment when stopped by a police officer for a traffic offense. Similarly,
4 judicial letterhead must not be used for conducting a judge's personal business,
5 although a judge may use judicial letterhead to write character reference letters when
6 such letters are otherwise permitted under this Code.

7
8 A judge must avoid lending the prestige of judicial office for the advancement of the
9 private interests of others. For example, a judge must not use the judge's judicial
10 position to gain advantage in a civil suit involving a member of the judge's family. In
11 contracts for publication of a judge's writings, a judge should retain control over the
12 advertising to avoid exploitation of the judge's office. As to the acceptance of awards,
13 see Section 5D(5) and Commentary.

14
15 Although a judge should be sensitive to possible abuse of the prestige of office, a judge
16 may, based on the judge's personal knowledge, serve as a reference or provide a letter
17 of recommendation. However, a judge must not initiate the communication of
18 information to a sentencing judge or a probation or corrections officer but may provide
19 to such persons information for the record in response to a formal request.

20
21 Judges may participate in the process of judicial selection by cooperating with
22 appointing authorities and screening committees seeking names for consideration, and
23 by responding to official inquiries concerning a person being considered for a judgeship.
24 See also Canon 7 regarding use of a judge's name in political activities.

25
26 A judge must not testify voluntarily as a character witness because to do so may lend
27 the prestige of the judicial office in support of the party for whom the judge testifies.
28 Moreover, when a judge testifies as a witness, a lawyer who regularly appears before
29 the judge may be placed in the awkward position of cross-examining the judge. A judge
30 may, however, testify when properly summoned. Except in unusual circumstances
31 where the demands of justice require, a judge should discourage a party from requiring
32 the judge to testify as a character witness.

33
34 Canon 2C. Florida Canon 2C is derived from a recommendation by the American Bar
35 Association and from the United States Senate Committee Resolution, 101st Congress,
36 Second Session, as adopted by the United States Senate Judiciary Committee on
37 August 2, 1990.

38
39 Membership of a judge in an organization that practices invidious discrimination gives
40 rise to perceptions that the judge's impartiality is impaired. Whether an organization
41 practices invidious discrimination is often a complex question to which judges should be
42 sensitive. The answer cannot be determined from a mere examination of an
43 organization's current membership rolls but rather depends on the history of the
44 organization's selection of members and other relevant factors, such as that the
45 organization is dedicated to the preservation of religious, ethnic, or cultural values of
46 legitimate common interest to its members, or that it is in fact and effect an intimate,

1 purely private organization whose membership limitations could not be constitutionally
2 prohibited. See *New York State Club Ass'n. Inc. v. City of New York*, 487 U.S. 1, 108
3 S.Ct. 2225, 101 L.Ed.2d 1 (1988); *Board of Directors of Rotary International v. Rotary*
4 *Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); *Roberts v. United*
5 *States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed. 2d 462 (1984). Other relevant
6 factors include the size and nature of the organization and the diversity of persons in the
7 locale who might reasonably be considered potential members. Thus the mere absence
8 of diverse membership does not by itself demonstrate a violation unless reasonable
9 persons with knowledge of all the relevant circumstances would expect that the
10 membership would be diverse in the absence of invidious discrimination. Absent such
11 factors, an organization is generally said to discriminate invidiously if it arbitrarily
12 excludes from membership on the basis of race, religion, sex, or national origin persons
13 who would otherwise be admitted to membership.
14

15 This Canon is not intended to prohibit membership in religious and ethnic clubs, such as
16 Knights of Columbus, Masons, B'nai B'rith, and Sons of Italy; civic organizations, such
17 as Rotary, Kiwanis, and The Junior League; young people's organizations, such as Boy
18 Scouts, Girl Scouts, Boy's Clubs, and Girl's Clubs; and charitable organizations, such as
19 United Way and Red Cross.
20

21 Although Section 2C relates only to membership in organizations that invidiously
22 discriminate on the basis of race, sex, religion or national origin, a judge's membership
23 in an organization that engages in any discriminatory membership practices prohibited
24 by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the
25 appearance of impropriety. In addition, it would be a violation of Canon 2 and Section
26 2A for a judge to arrange a meeting at a club that the judge knows practices invidious
27 discrimination on the basis of race, sex, religion or national origin in its membership or
28 other policies, or for the judge to regularly use such a club. Moreover, public
29 manifestation by a judge of the judge's knowing approval of invidious discrimination on
30 any basis gives the appearance of impropriety under Canon 2 and diminishes public
31 confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.
32

33 When a person who is a judge on the date this Code becomes effective learns that an
34 organization to which the judge belongs engages in invidious discrimination that would
35 preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is
36 permitted, in lieu of resigning, to make immediate efforts to have the organization
37 discontinue its invidiously discriminatory practices, but is required to suspend
38 participation in any other activities of the organization. If the organization fails to
39 discontinue its invidiously discriminatory practices as promptly as possible (and in all
40 events within a year of the judge's first learning of the practices), the judge is required to
41 resign immediately from the organization.
42

1 **Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and**
2 **Diligently**

3
4
5 A. Judicial Duties in General.

6
7 The judicial duties of a judge take precedence over all the judge's other activities. The
8 judge's judicial duties include all the duties of the judge's office prescribed by law. In the
9 performance of these duties, the specific standards set forth in the following sections
10 apply.

11
12 B. Adjudicative Responsibilities.

13
14 (1) A judge shall hear and decide matters assigned to the judge except those in which
15 disqualification is required.

16
17 (2) A judge shall be faithful to the law and maintain professional competence in it. A
18 judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

19
20 (3) A judge shall require order and decorum in proceedings before the judge.

21
22 (4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses,
23 lawyers, and others with whom the judge deals in an official capacity, and shall require
24 similar conduct of lawyers, and of staff, court officials, and others subject to the judge's
25 direction and control.

26
27 (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in
28 the performance of judicial duties, by words or conduct manifest bias or prejudice,
29 including but not limited to bias or prejudice based upon race, sex, religion, national
30 origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit
31 staff, court officials, and others subject to the judge's direction and control to do so. This
32 section does not preclude the consideration of race, sex, religion, national origin,
33 disability, age, sexual orientation, socioeconomic status, or other similar factors when
34 they are issues in the proceeding.

35
36 (6) A judge shall require lawyers in proceedings before the judge to refrain from
37 manifesting, by words, gestures, or other conduct, bias or prejudice based upon race,
38 sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status,
39 against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude
40 legitimate advocacy when race, sex, religion, national origin, disability, age, sexual
41 orientation, socioeconomic status, or other similar factors are issues in the proceeding.

42
43 (7) A judge shall accord to every person who has a legal interest in a proceeding, or that
44 person's lawyer, the right to be heard according to law. A judge shall not initiate, permit,
45 or consider ex parte communications, or consider other communications made to the

1 judge outside the presence of the parties concerning a pending or impending
2 proceeding except that:

3
4 (a) Where circumstances require, ex parte communications for scheduling,
5 administrative purposes, or emergencies that do not deal with substantive matters or
6 issues on the merits are authorized, provided:

7
8 (i) the judge reasonably believes that no party will gain a procedural or tactical
9 advantage as a result of the ex parte communication, and

10
11 (ii) the judge makes provision promptly to notify all other parties of the substance of the
12 ex parte communication and allows an opportunity to respond.

13
14 (b) A judge may obtain the advice of a disinterested expert on the law applicable to a
15 proceeding before the judge if the judge gives notice to the parties of the person
16 consulted and the substance of the advice and affords the parties reasonable
17 opportunity to respond.

18
19 (c) A judge may consult with other judges or with court personnel whose function is to
20 aid the judge in carrying out the judge's adjudicative responsibilities.

21
22 (d) A judge may, with the consent of the parties, confer separately with the parties and
23 their lawyers in an effort to mediate or settle matters pending before the judge.

24
25 (e) A judge may initiate or consider any ex parte communications when expressly
26 authorized by law to do so.

27
28 (8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

29
30 (9) A judge shall not, while a proceeding is pending or impending in any court, make
31 any public comment that might reasonably be expected to affect its outcome or impair
32 its fairness or make any nonpublic comment that might substantially interfere with a fair
33 trial or hearing. The judge shall require similar abstention on the part of court personnel
34 subject to the judge's direction and control. This Section does not prohibit judges from
35 making public statements in the course of their official duties or from explaining for
36 public information the procedures of the court. This Section does not apply to
37 proceedings in which the judge is a litigant in a personal capacity.

38
39 (10) A judge shall not, with respect to parties or classes of parties, cases, controversies
40 or issues likely to come before the court, make pledges, promises or commitments that
41 are inconsistent with the impartial performance of the adjudicative duties of the office.

42
43 (11) A judge shall not commend or criticize jurors for their verdict other than in a court
44 order or opinion in a proceeding, but may express appreciation to jurors for their service
45 to the judicial system and the community.

1 (12) A judge shall not disclose or use, for any purpose unrelated to judicial duties,
2 nonpublic information acquired in a judicial capacity.

3
4 C. Administrative Responsibilities.

5
6 (1) A judge shall diligently discharge the judge's administrative responsibilities without
7 bias or prejudice and maintain professional competence in judicial administration, and
8 should cooperate with other judges and court officials in the administration of court
9 business.

10
11 (2) A judge shall require staff, court officials, and others subject to the judge's direction
12 and control to observe the standards of fidelity and diligence that apply to the judge and
13 to refrain from manifesting bias or prejudice in the performance of their official duties.

14
15 (3) A judge with supervisory authority for the judicial performance of other judges shall
16 take reasonable measures to assure the prompt disposition of matters before them and
17 the proper performance of their other judicial responsibilities.

18
19 (4) A judge shall not make unnecessary appointments. A judge shall exercise the power
20 of appointment impartially and on the basis of merit. A judge shall avoid nepotism and
21 favoritism. A judge shall not approve compensation of appointees beyond the fair value
22 of services rendered.

23
24 D. Disciplinary Responsibilities.

25
26 (1) A judge who receives information or has actual knowledge that substantial likelihood
27 exists that another judge has committed a violation of this Code shall take appropriate
28 action.

29
30 (2) A judge who receives information or has actual knowledge that substantial likelihood
31 exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar
32 shall take appropriate action.

33
34 (3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted
35 by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely
36 privileged, and no civil action predicated thereon may be instituted against the judge.

37
38 E. Disqualification.

39
40 (1) A judge shall disqualify himself or herself in a proceeding in which the judge's
41 impartiality might reasonably be questioned, including but not limited to instances
42 where:

43
44 (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or
45 personal knowledge of disputed evidentiary facts concerning the proceeding;

1 (b) the judge served as a lawyer or was the lower court judge in the matter in
2 controversy, or a lawyer with whom the judge previously practiced law served during
3 such association as a lawyer concerning the matter, or the judge has been a material
4 witness concerning it;

5
6 (c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse,
7 parent, or child wherever residing, or any other member of the judge's family residing in
8 the judge's household has an economic interest in the subject matter in controversy or
9 in a party to the proceeding or has any other more than de minimis interest that could
10 be substantially affected by the proceeding;

11
12 (d) the judge or the judge's spouse, or a person within the third degree of relationship to
13 either of them, or the spouse of such a person:

14
15 (i) is a party to the proceeding, or an officer, director, or trustee of a party;

16
17 (ii) is acting as a lawyer in the proceeding;

18
19 (iii) is known by the judge to have a more than de minimis interest that could be
20 substantially affected by the proceeding;

21
22 (iv) is to the judge's knowledge likely to be a material witness in the proceeding;

23
24 (e) the judge's spouse or a person within the third degree of relationship to the judge
25 participated as a lower court judge in a decision to be reviewed by the judge;

26
27 (f) the judge, while a judge or a candidate for judicial office, has made a public
28 statement that commits, or appears to commit, the judge with respect to:

29
30 (i) parties or classes of parties in the proceeding;

31
32 (ii) an issue in the proceeding; or

33
34 (iii) the controversy in the proceeding.

35
36 (2) A judge should keep informed about the judge's personal and fiduciary economic
37 interests, and make a reasonable effort to keep informed about the economic interests
38 of the judge's spouse and minor children residing in the judge's household.

39
40 F. Remittal of Disqualification.

41
42 A judge disqualified by the terms of Section 3E may disclose on the record the basis of
43 the judge's disqualification and may ask the parties and their lawyers to consider, out of
44 the presence of the judge, whether to waive disqualification. If following disclosure of
45 any basis for disqualification other than personal bias or prejudice concerning a party,
46 the parties and lawyers, without participation by the judge, all agree the judge should

1 not be disqualified, and the judge is then willing to participate, the judge may participate
2 in the proceeding. The agreement shall be incorporated in the record of the proceeding.
3

4
5 COMMENTARY

6
7 Canon 3B(4). The duty to hear all proceedings fairly and with patience is not
8 inconsistent with the duty to dispose promptly of the business of the court. Judges can
9 be efficient and business-like while being patient and deliberate.
10

11 Canon 3B(5). A judge must refrain from speech, gestures or other conduct that could
12 reasonably be perceived as sexual harassment and must require the same standard of
13 conduct of others subject to the judge's direction and control.
14

15 A judge must perform judicial duties impartially and fairly. A judge who manifests bias
16 on any basis in a proceeding impairs the fairness of the proceeding and brings the
17 judiciary into disrepute. Facial expression and body language, in addition to oral
18 communication, can give to parties or lawyers in the proceeding, jurors, the media and
19 others an appearance of judicial bias. A judge must be alert to avoid behavior that may
20 be perceived as prejudicial.
21

22 Canon 3B(7). The proscription against communications concerning a proceeding
23 includes communications from lawyers, law teachers, and other persons who are not
24 participants in the proceeding, except to the limited extent permitted.
25

26 To the extent reasonably possible, all parties or their lawyers shall be included in
27 communications with a judge.
28

29 Whenever presence of a party or notice to a party is required by Section 3B(7), it is the
30 party's lawyer, or if the party is unrepresented, the party who is to be present or to
31 whom notice is to be given.
32

33 An appropriate and often desirable procedure for a court to obtain the advice of a
34 disinterested expert on legal issues is to invite the expert to file a brief as *amicus curiae*.
35

36 Certain *ex parte* communication is approved by Section 3B(7) to facilitate scheduling
37 and other administrative purposes and to accommodate emergencies. In general,
38 however, a judge must discourage *ex parte* communication and allow it only if all the
39 criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all *ex*
40 *parte* communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a
41 proceeding pending or impending before the judge.
42

43 A judge must not independently investigate facts in a case and must consider only the
44 evidence presented.
45

1 A judge may request a party to submit proposed findings of fact and conclusions of law,
2 so long as the other parties are apprised of the request and are given an opportunity to
3 respond to the proposed findings and conclusions.
4

5 A judge must make reasonable efforts, including the provision of appropriate
6 supervision, to ensure that Section 3B(7) is not violated through law clerks or other
7 personnel on the judge's staff.
8

9 If communication between the trial judge and the appellate court with respect to a
10 proceeding is permitted, a copy of any written communication or the substance of any
11 oral communication should be provided to all parties.
12

13 Canon 3B(8). In disposing of matters promptly, efficiently, and fairly, a judge must
14 demonstrate due regard for the rights of the parties to be heard and to have issues
15 resolved without unnecessary cost or delay. Containing costs while preserving
16 fundamental rights of parties also protects the interests of witnesses and the general
17 public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory
18 practices, avoidable delays, and unnecessary costs. A judge should encourage and
19 seek to facilitate settlement, but parties should not feel coerced into surrendering the
20 right to have their controversy resolved by the courts.
21

22 Prompt disposition of the court's business requires a judge to devote adequate time to
23 judicial duties, to be punctual in attending court and expeditious in determining matters
24 under submission, and to insist that court officials, litigants, and their lawyers cooperate
25 with the judge to that end.
26

27 Canon 3B(9) and 3B(10). Sections 3B(9) and (10) restrictions on judicial speech are
28 essential to the maintenance of the integrity, impartiality, and independence of the
29 judiciary. A pending proceeding is one that has begun but not yet reached final
30 disposition. An impending proceeding is one that is anticipated but not yet begun. The
31 requirement that judges abstain from public comment regarding a pending or impending
32 proceeding continues during any appellate process and until final disposition. Sections
33 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the
34 judge is a litigant in a personal capacity, but in cases such as a writ of mandamus
35 where the judge is a litigant in an official capacity, the judge must not comment publicly.
36 The conduct of lawyers relating to trial publicity is governed by Rule 4-3.6 of the Rules
37 Regulating The Florida Bar.
38

39 Canon 3B(10). Commending or criticizing jurors for their verdict may imply a judicial
40 expectation in future cases and may impair a juror's ability to be fair and impartial in a
41 subsequent case.
42

43 Canon 3C(4). Appointees of a judge include assigned counsel, officials such as
44 referees, commissioners, special magistrates, receivers, mediators, arbitrators, and
45 guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties

1 to an appointment or an award of compensation does not relieve the judge of the
2 obligation prescribed by Section 3C(4). See also Fla.Stat. § 112.3135 (1991).

3
4 Canon 3D. Appropriate action may include direct communication with the judge or
5 lawyer who has committed the violation, other direct action if available, or reporting the
6 violation to the appropriate authority or other agency. If the conduct is minor, the Canon
7 allows a judge to address the problem solely by direct communication with the offender.
8 A judge having knowledge, however, that another judge has committed a violation of
9 this Code that raises a substantial question as to that other judge's fitness for office or
10 has knowledge that a lawyer has committed a violation of the Rules of Professional
11 Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or
12 fitness as a lawyer in other respects, is required under this Canon to inform the
13 appropriate authority. While worded differently, this Code provision has the identical
14 purpose as the related Model Code provisions.

15
16 Canon 3E(1). Under this rule, a judge is disqualified whenever the judge's impartiality
17 might reasonably be questioned, regardless of whether any of the specific rules in
18 Section 3E(1) apply. For example, if a judge were in the process of negotiating for
19 employment with a law firm, the judge would be disqualified from any matters in which
20 that law firm appeared, unless the disqualification was waived by the parties after
21 disclosure by the judge.

22
23 A judge should disclose on the record information that the judge believes the parties or
24 their lawyers might consider relevant to the question of disqualification, even if the judge
25 believes there is no real basis for disqualification. The fact that the judge conveys this
26 information does not automatically require the judge to be disqualified upon a request
27 by either party, but the issue should be resolved on a case-by-case basis. Similarly, if a
28 lawyer or party has previously filed a complaint against the judge with the Judicial
29 Qualifications Commission, that the fact does not automatically require disqualification
30 of the judge. Such disqualification should be on a case-by-case basis.

31
32 By decisional law, the rule of necessity may override the rule of disqualification. For
33 example, a judge might be required to participate in judicial review of a judicial salary
34 statute, or might be the only judge available in a matter requiring immediate judicial
35 action, such as a hearing on probable cause or a temporary restraining order. In the
36 latter case, the judge must disclose on the record the basis for possible disqualification
37 and use reasonable efforts to transfer the matter to another judge as soon as
38 practicable.

39
40 Canon 3E(1)(b). A lawyer in a government agency does not ordinarily have an
41 association with other lawyers employed by that agency within the meaning of Section
42 3E(1)(b); a judge formerly employed by a government agency, however, should
43 disqualify himself or herself in a proceeding if the judge's impartiality might reasonably
44 be questioned because of such association.

1 Canon 3E(1)(d). The fact that a lawyer in a proceeding is affiliated with a law firm with
2 which a relative of the judge is affiliated does not of itself disqualify the judge. Under
3 appropriate circumstances, the fact that "the judge's impartiality might reasonably be
4 questioned" under Section 3E(1), or that the relative is known by the judge to have an
5 interest in the law firm that could be "substantially affected by the outcome of the
6 proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.
7

8 Canon 3E(1)(e). It is not uncommon for a judge's spouse or a person within the third
9 degree of relationship to a judge to also serve as a judge in either the trial or appellate
10 courts. However, where a judge exercises appellate authority over another judge, and
11 that other judge is either a spouse or a relationship within the third degree, then this
12 Code requires disqualification of the judge that is exercising appellate authority. This
13 Code, under these circumstances, precludes the appellate judge from participating in
14 the review of the spouse's or relation's case.
15

16 Canon 3F. A remittal procedure provides the parties an opportunity to proceed without
17 delay if they wish to waive the disqualification. To assure that consideration of the
18 question of remittal is made independently of the judge, a judge must not solicit, seek,
19 or hear comment on possible remittal or waiver of the disqualification unless the lawyers
20 jointly propose remittal after consultation as provided in the rule. A party may act
21 through counsel if counsel represents on the record that the party has been consulted
22 and consents. As a practical matter, a judge may wish to have all parties and their
23 lawyers sign the remittal agreement.
24

1 **Canon 4. A Judge is Encouraged to Engage in Activities to Improve the Law, the**
2 **Legal System, and the Administration of Justice**

3
4
5 A. A judge shall conduct all of the judge's quasi-judicial activities so that they do not:

6
7 (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

8
9 (2) undermine the judge's independence, integrity, or impartiality;

10
11 (3) demean the judicial office;

12
13 (4) interfere with the proper performance of judicial duties;

14
15 (5) lead to frequent disqualification of the judge; or

16
17 (6) appear to a reasonable person to be coercive.

18
19 B. A judge is encouraged to speak, write, lecture, teach and participate in other quasi-
20 judicial activities concerning the law, the legal system, the administration of justice, and
21 the role of the judiciary as an independent branch within our system of government,
22 subject to the requirements of this Code.

23
24 C. A judge shall not appear at a public hearing before, or otherwise consult with, an
25 executive or legislative body or official except on matters concerning the law, the legal
26 system or the administration of justice or except when acting pro se in a matter involving
27 the judge or the judge's interests.

28
29 D. A judge is encouraged to serve as a member, officer, director, trustee or non-legal
30 advisor of an organization or governmental entity devoted to the improvement of the
31 law, the legal system, the judicial branch, or the administration of justice, subject to the
32 following limitations and the other requirements of this Code.

33
34 (1) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely
35 that the organization

36
37 (a) will be engaged in proceedings that would ordinarily come before the judge, or

38
39 (b) will be engaged frequently in adversary proceedings in the court of which the judge
40 is a member or in any court subject to the appellate jurisdiction of the court of which the
41 judge is a member.

42
43 (2) A judge as an officer, director, trustee or non-legal advisor, or as a member or
44 otherwise:

1 (a) may assist such an organization in planning fund-raising and may participate in the
2 management and investment of the organization's funds, but shall not personally or
3 directly participate in the solicitation of funds, except that a judge may solicit funds from
4 other judges over whom the judge does not exercise supervisory or appellate authority;
5

6 (b) may appear or speak at, receive an award or other recognition at, be featured on the
7 program of, and permit the judge's title to be used in conjunction with an event of such
8 an organization or entity, but if the event serves a fund-raising purpose, the judge may
9 participate only if the event concerns the law, the legal system, or the administration of
10 justice and the funds raised will be used for a law related purpose(s);
11

12 (c) may make recommendations to public and private fund-granting organizations on
13 projects and programs concerning the law, the legal system or the administration of
14 justice;
15

16 (d) shall not personally or directly participate in membership solicitation if the solicitation
17 might reasonably be perceived as coercive;
18

19 (e) shall not make use of court premises, staff, stationery, equipment, or other
20 resources for fund-raising purposes, except for incidental use for activities that concern
21 the law, the legal system, or the administration of justice, subject to the requirements of
22 this Code.
23

24 25 COMMENTARY

26
27 Canon 4A. A judge is encouraged to participate in activities designed to improve the
28 law, the legal system, and the administration of justice. In doing so, however, it must be
29 understood that expressions of bias or prejudice by a judge, even outside the judge's
30 judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as
31 a judge and may undermine the independence and integrity of the judiciary.
32 Expressions which may do so include jokes or other remarks demeaning individuals on
33 the basis of their race, sex, religion, national origin, disability, age, sexual orientation or
34 socioeconomic status. See Canon 2C and accompanying Commentary.
35

36 Canon 4B. This canon was clarified in order to encourage judges to engage in activities
37 to improve the law, the legal system, and the administration of justice. As a judicial
38 officer and person specially learned in the law, a judge is in a unique position to
39 contribute to the improvement of the law, the legal system, and the administration of
40 justice, including, but not limited to, the improvement of the role of the judiciary as an
41 independent branch of government, the revision of substantive and procedural law, the
42 improvement of criminal and juvenile justice, and the improvement of justice in the
43 areas of civil, criminal, family, domestic violence, juvenile delinquency, juvenile
44 dependency, probate and motor vehicle law. To the extent that time permits, a judge is
45 encouraged to do so, either independently or through a bar association, judicial
46 conference or other organization dedicated to the improvement of the law. Support of

1 pro bono legal services by members of the bench is an activity that relates to
2 improvement of the administration of justice. Accordingly, a judge may engage in
3 activities intended to encourage attorneys to perform pro bono services, including, but
4 not limited to: participating in events to recognize attorneys who do pro bono work,
5 establishing general procedural or scheduling accommodations for pro bono attorneys
6 as feasible, and acting in an advisory capacity to pro bono programs. Judges are
7 encouraged to participate in efforts to promote the fair administration of justice, the
8 independence of the judiciary and the integrity of the legal profession, which may
9 include the expression of opposition to the persecution of lawyers and judges in other
10 countries.

11
12 The phrase "subject to the requirements of this Code" is included to remind judges that
13 the use of permissive language in various sections of the Code does not relieve a judge
14 from the other requirements of the Code that apply to the specific conduct.

15
16 Canon 4C. See Canon 2B regarding the obligation to avoid improper influence.

17
18 Canon 4D(1). The changing nature of some organizations and of their relationship to the
19 law makes it necessary for a judge regularly to reexamine the activities of each
20 organization with which the judge is affiliated to determine if it is proper for the judge to
21 continue the affiliation. For example, the boards of some legal aid organizations now
22 make policy decisions that may have political significance or imply commitment to
23 causes that may come before the courts for adjudication.

24
25 A judge may be a speaker or guest of honor at an organization's fund-raising event if
26 the event concerns the law, the legal system, or the administration of justice, and the
27 judge does not engage in the direct solicitation of funds. However, judges may not
28 participate in or allow their titles to be used in connection with fund-raising activities on
29 behalf of an organization engaging in advocacy if such participation would cast doubt on
30 the judge's capacity to act impartially as a judge.

31
32 Use of an organization letterhead for fund-raising or membership solicitation does not
33 violate Canon 4D(2) provided the letterhead lists only the judge's name and office or
34 other position in the organization, and, if comparable designations are listed for other
35 persons, the judge's judicial designation. In addition, a judge must also make
36 reasonable efforts to ensure that the judge's staff, court officials and others subject to
37 the judge's direction and control do not solicit funds on the judge's behalf for any
38 purpose, charitable or otherwise.
39

1 **Canon 5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of**
2 **Conflict with Judicial Duties**

3
4
5 A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra-
6 judicial activities so that they do not:

- 7
8 (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
9
10 (2) undermine the judge's independence, integrity, or impartiality;
11
12 (3) demean the judicial office;
13
14 (4) interfere with the proper performance of judicial duties;
15
16 (5) lead to frequent disqualification of the judge; or
17
18 (6) appear to a reasonable person to be coercive.

19
20 B. Avocational Activities. A judge is encouraged to speak, write, lecture, teach and
21 participate in other extrajudicial activities concerning non-legal subjects, subject to the
22 requirements of this Code.

23
24 C. Governmental, Civic or Charitable Activities.

25
26 (1) A judge shall not appear at a public hearing before, or otherwise consult with, an
27 executive or legislative body or official except on matters concerning the law, the legal
28 system or the administration of justice or except when acting pro se in a matter involving
29 the judge or the judge's interests.

30
31 (2) A judge shall not accept appointment to a governmental committee or commission or
32 other governmental position that is concerned with issues of fact or policy on matters
33 other than the improvement of the law, the legal system, the judicial branch, or the
34 administration of justice. A judge may, however, represent a country, state or locality on
35 ceremonial occasions or in connection with historical, educational or cultural activities.

36
37 (3) A judge may serve as an officer, director, trustee or non-legal advisor of an
38 educational, religious, charitable, fraternal, sororal or civic organization not conducted
39 for profit, subject to the following limitations and the other requirements of this Code.

40
41 (a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely
42 that the organization

43
44 (i) will be engaged in proceedings that would ordinarily come before the judge, or
45

1 (ii) will be engaged frequently in adversary proceedings in the court of which the judge
2 is a member or in any court subject to the appellate jurisdiction of the court of which the
3 judge is a member.

4
5 (b) A judge as an officer, director, trustee or non-legal advisor, or as a member or
6 otherwise:

7
8 (i) may assist such an organization in planning fund-raising and may participate in the
9 management and investment of the organization's funds, but shall not personally or
10 directly participate in the solicitation of funds, except that a judge may solicit funds from
11 other judges over whom the judge does not exercise supervisory or appellate authority;

12
13 (ii) shall not personally or directly participate in membership solicitation if the solicitation
14 might reasonably be perceived as coercive;

15
16 (iii) shall not use or permit the use of the prestige of judicial office for fund-raising or
17 membership solicitation.

18
19 D. Financial Activities.

20
21 (1) A judge shall not engage in financial and business dealings that

22
23 (a) may reasonably be perceived to exploit the judge's judicial position, or

24
25 (b) involve the judge in frequent transactions or continuing business relationships with
26 those lawyers or other persons likely to come before the court on which the judge
27 serves.

28
29 (2) A judge may, subject to the requirements of this Code, hold and manage
30 investments of the judge and members of the judge's family, including real estate, and
31 engage in other remunerative activity.

32
33 (3) A judge shall not serve as an officer, director, manager, general partner, advisor or
34 employee of any business entity except that a judge may, subject to the requirements of
35 this Code, manage and participate in:

36
37 (a) a business closely held by the judge or members of the judge's family, or

38
39 (b) a business entity primarily engaged in investment of the financial resources of the
40 judge or members of the judge's family.

41
42 (4) A judge shall manage the judge's investments and other financial interests to
43 minimize the number of cases in which the judge is disqualified. As soon as the judge
44 can do so without serious financial detriment, the judge shall divest himself or herself of
45 investments and other financial interests that might require frequent disqualification.
46

1 (5) A judge shall not accept, and shall urge members of the judge's family residing in the
2 judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

3
4 (a) a gift incident to a public testimonial, books, tapes and other resource materials
5 supplied by publishers on a complimentary basis for official use, or an invitation to the
6 judge and the judge's spouse or guest to attend a bar-related function or an activity
7 devoted to the improvement of the law, the legal system or the administration of justice;

8
9 (b) a gift, award or benefit incident to the business, profession or other separate activity
10 of a spouse or other family member of a judge residing in the judge's household,
11 including gifts, awards and benefits for the use of both the spouse or other family
12 member and the judge (as spouse or family member), provided the gift, award or benefit
13 could not reasonably be perceived as intended to influence the judge in the
14 performance of judicial duties;

15
16 (c) ordinary social hospitality;

17
18 (d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary
19 or birthday, if the gift is fairly commensurate with the occasion and the relationship;

20
21 (e) a gift, bequest, favor or loan from a relative or close personal friend whose
22 appearance or interest in a case would in any event require disqualification under
23 Canon 3E;

24
25 (f) a loan from a lending institution in its regular course of business on the same terms
26 generally available to persons who are not judges;

27
28 (g) a scholarship or fellowship awarded on the same terms and based on the same
29 criteria applied to other applicants; or

30
31 (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person
32 who has come or is likely to come or whose interests have come or are likely to come
33 before the judge; and, if its value, or the aggregate value in a calendar year of such
34 gifts, bequests, favors, or loans from a single source, exceeds \$100.00, the judge
35 reports it in the same manner as the judge reports gifts under Canon 6B(2).

36
37 E. Fiduciary Activities.

38
39 (1) A judge shall not serve as executor, administrator or other personal representative,
40 trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person
41 of a member of the judge's family, and then only if such service will not interfere with the
42 proper performance of judicial duties.

43
44 (2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be
45 engaged in proceedings that would ordinarily come before the judge, or if the estate,

1 trust or ward becomes involved in adversary proceedings in the court on which the
2 judge serves or one under its appellate jurisdiction.

3
4 (3) The same restrictions on financial activities that apply to a judge personally also
5 apply to the judge while acting in a fiduciary capacity.

6
7 F. Service as Arbitrator or Mediator.

8
9 (1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial
10 functions in a private capacity unless expressly authorized by law or Court rule. A judge
11 may, however, take the necessary educational and training courses required to be a
12 qualified and certified arbitrator or mediator, and may fulfill the requirements of
13 observing and conducting actual arbitration or mediation proceedings as part of the
14 certification process, provided such program does not, in any way, interfere with the
15 performance of the judge's judicial duties.

16
17 (2) A senior judge may serve as a mediator in a case in which the senior judge is not
18 presiding only if the senior judge is certified pursuant to rule 10.100, Florida Rules for
19 Certified and Court-Appointed Mediators. Such senior judge may be associated with
20 entities that are solely engaged in offering mediation or other alternative dispute
21 resolution services but that are not otherwise engaged in the practice of law. However,
22 such senior judge may in no other way advertise, solicit business, associate with a law
23 firm, or participate in any other activity that directly or indirectly promotes his or her
24 mediation services. A senior judge shall not serve as a mediator in any case in which
25 the judge is currently presiding. A senior judge who provides mediation services shall
26 not preside over the same type of case the judge mediates in the circuit where the
27 mediation services are provided; however, a senior judge may preside over other types
28 of cases (e.g., criminal, juvenile, family law, probate) in the same circuit and may
29 preside over cases in circuits in which the judge does not provide mediation services. A
30 senior judge shall disclose if the judge is being utilized or has been utilized as a
31 mediator by any party, attorney, or law firm involved in the case pending before the
32 senior judge. Absent express consent of all parties, a senior judge is prohibited from
33 presiding over any case involving any party, attorney, or law firm that is utilizing or has
34 utilized the judge as a mediator within the previous three years. A senior judge shall
35 disclose any negotiations or agreements for the provision of mediation services
36 between the senior judge and any of the parties or counsel to the case.

37
38 G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a
39 judge may act pro se and may, without compensation, give legal advice to and draft or
40 review documents for a member of the judge's family.

1 **Canon 6. Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not**
2 **Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File**
3 **Public Reports as Required by Article II, Section 8, of the Constitution of Florida,**
4 **and Shall Publicly Report Gifts; Additional Financial Information Shall be Filed**
5 **With the Judicial Qualifications Commission to Ensure Full Financial Disclosure**
6

7
8 A. Compensation for Quasi-Judicial and Extrajudicial Services and Reimbursement of
9 Expenses.
10

11 A judge may receive compensation and reimbursement of expenses for the quasi-
12 judicial and extrajudicial activities permitted by this Code, if the source of such
13 payments does not give the appearance of influencing the judge in the performance of
14 judicial duties or otherwise give the appearance of impropriety, subject to the following
15 restrictions:
16

17 (1) Compensation. Compensation shall not exceed a reasonable amount nor shall it
18 exceed what a person who is not a judge would receive for the same activity.
19

20 (2) Expense Reimbursement. Expense reimbursement shall be limited to the actual cost
21 of travel, food, and lodging reasonably incurred by the judge and, where appropriate to
22 the occasion, to the judge's spouse. Any payment in excess of such an amount is
23 compensation.
24

25 B. Public Financial Reporting.
26

27 (1) Income and Assets. A judge shall file such public report as may be required by law
28 for all public officials to comply fully with the provisions of Article II, Section 8, of the
29 Constitution of Florida. The form for public financial disclosure shall be that
30 recommended or adopted by the Florida Commission on Ethics for use by all public
31 officials. The form shall be filed with the Florida Commission on Ethics on the date
32 prescribed by law, and a copy shall be filed simultaneously with the Judicial
33 Qualifications Commission.
34

35 (2) Gifts. A judge shall file a public report of all gifts which are required to be disclosed
36 under Canon 5D(5)(h) of the Code of Judicial Conduct. The report of gifts received in
37 the preceding calendar year shall be filed with the Florida Commission on Ethics on or
38 before July 1 of each year. A copy shall be filed simultaneously with the Judicial
39 Qualifications Commission.
40

41 (3) Disclosure of Financial Interests Upon Leaving Office. A judge shall file a final
42 disclosure statement within 60 days after leaving office, which report shall cover the
43 period between January 1 of the year in which the judge leaves office and his or her last
44 day of office, unless, within the 60-day period, the judge takes another public position
45 requiring financial disclosure under Article II, Section 8, of the Constitution of Florida, or
46 is otherwise required to file full and public disclosure for the final disclosure period. The

1 form for disclosure of financial interests upon leaving office shall be that recommended
2 or adopted by the Florida Commission on Ethics for use by all public officials. The form
3 shall be filed with the Florida Commission on Ethics and a copy shall be filed
4 simultaneously with the Judicial Qualifications Commission.
5

6 C. Confidential Financial Reporting to the Judicial Qualifications Commission.

7

8 To ensure that complete financial information is available for all judicial officers, there
9 shall be filed with the Judicial Qualifications Commission on or before July 1 of each
10 year, if not already included in the public report to be filed under Canon 6B(1) and (2), a
11 verified list of the names of the corporations and other business entities in which the
12 judge has a financial interest as of December 31 of the preceding year, which shall be
13 transmitted in a separate sealed envelope, placed by the Commission in safekeeping,
14 and not be opened or the contents thereof disclosed except in the manner hereinafter
15 provided.
16

17 At any time during or after the pendency of a cause, any party may request information
18 as to whether the most recent list filed by the judge or judges before whom the cause is
19 or was pending contains the name of any specific person or corporation or other
20 business entity which is a party to the cause or which has a substantial direct or indirect
21 financial interest in its outcome. Neither the making of the request nor the contents
22 thereof shall be revealed by the chair to any judge or other person except at the
23 instance of the individual making the request. If the request meets the requirements
24 hereinabove set forth, the chair shall render a prompt answer thereto and thereupon
25 return the report to safekeeping for retention in accordance with the provisions
26 hereinabove stated. All such requests shall be verified and transmitted to the chair of
27 the Commission on forms to be approved by it.
28

29 D. Limitation of Disclosure.

30

31 Disclosure of a judge's income, debts, investments or other assets is required only to
32 the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required
33 by law.
34

35 COMMENTARY

36

37
38 Canon 6A. See Section 5D(5)(a)-(h) regarding reporting of gifts, bequests and loans.
39

40 The Code does not prohibit a judge from accepting honoraria or speaking fees provided
41 that the compensation is reasonable and commensurate with the task performed. A
42 judge should ensure, however, that no conflicts are created by the arrangement. Judges
43 must not appear to trade on the judicial position for personal advantage. Nor should a
44 judge spend significant time away from court duties to meet speaking or writing
45 commitments for compensation. In addition, the source of the payment must not raise
46 any question of undue influence or the judge's ability or willingness to be impartial.

1 Canon 6C. Subparagraph A prescribes guidelines for additional compensation and the
2 reimbursement of expense funds received by a judge.

3
4 Subparagraphs B and C prescribe the three types of financial disclosure reports
5 required of each judicial officer.

6
7 The first is the Ethics Commission's constitutionally required form pursuant to Article II,
8 Section 8, of the Constitution. It must be filed each year as prescribed by law. The
9 financial reporting period is for the previous calendar year. A final disclosure statement
10 generally is required when a judge leaves office. The filing of the income tax return is a
11 permissible alternative.

12
13 The second is a report of gifts received during the preceding calendar year to be filed
14 publicly with the Florida Commission on Ethics. The gifts to be reported are in
15 accordance with Canon 5D(5)(h). This reporting is in lieu of that prescribed by statute as
16 stated in the Supreme Court's opinion rendered in In re Code of Judicial Conduct, 281
17 So. 2d 21 (Fla.1973). The form for this report is as follows:

18
19 Form 6A. Gift Disclosure

20
21 All judicial officers must file with the Florida Commission on Ethics a list of all gifts
22 received during the preceding calendar year of a value in excess of \$100.00 as
23 provided in Canon 5D(5) and Canon 6B(2) of the Code of Judicial Conduct.

24
25 Name:

26 _____
27 Telephone:

28 _____
29 Address:

30 _____
31 Position Held:

32 _____
33
34 Please identify all gifts you received during the preceding calendar year of a value in
35 excess of \$100.00, as required by Canon 5D(5) and Canon 6B(2) of the Code of
36 Judicial Conduct.

37
38
39
40
41
42
43 OATH

44
45 State of Florida

46 County of _____

1 I, _____, the public official filing this disclosure statement, being first duly sworn,
2 do depose on oath and say that the facts set forth in the above statement are true,
3 correct, and complete to the best of my knowledge and belief.

4 _____
5 (Signature of Reporting Official)

6 _____
7 (Signature of Officer Authorized to Administer Oaths)

8
9 My Commission expires _____.
10 Sworn to and subscribed before me this
11 _____ day of _____, 20____.

12
13
14 COMMENTARY

15
16 The third financial disclosure report is prescribed in subparagraph C. This provision
17 ensures that there will be complete financial information for all judicial officers available
18 with the Judicial Qualifications Commission by requiring that full disclosure be filed
19 confidentially with the Judicial Qualifications Commission in the event the limited
20 disclosure alternative is selected under the provisions of Article II, Section 8.

21
22 The amendment to this Canon requires in 6B(2) a separate gift report to be filed with the
23 Florida Commission on Ethics on or before July 1 of each year. The form to be used for
24 that report is included in the commentary to Canon 6. It should be noted that Canon 5,
25 as it presently exists, restricts and prohibits the receipt of certain gifts. This provision is
26 not applicable to other public officials.

27
28 With reference to financial disclosure, if the judge chooses the limited disclosure
29 alternative available under the provision of Article II, Section 8, of the Constitution of
30 Florida, without the inclusion of the judge's Federal Income Tax Return, then the judge
31 must file with the Commission a list of the names of corporations or other business
32 entities in which the judge has a financial interest even though the amount is less than
33 \$1,000. This information remains confidential until a request is made by a party to a
34 cause before the judge. This latter provision continues to ensure that complete financial
35 information for all judicial officers is available with the Judicial Qualifications
36 Commission and that parties who are concerned about a judge's possible financial
37 interest have a means of obtaining that information as it pertains to a particular cause
38 before the judge.

39
40 Canon 6D. Section 3E requires a judge to disqualify himself or herself in any proceeding
41 in which the judge has an economic interest. See "economic interest" as explained in
42 the Definitions Section. Section 5D requires a judge to refrain from engaging in
43 business and from financial activities that might interfere with the impartial performance
44 of judicial duties; Section 6B requires a judge to report all compensation the judge
45 received for activities outside judicial office. A judge has the rights of any other citizen,
46 including the right to privacy of the judge's financial affairs, except to the extent that

1 limitations established by law are required to safeguard the proper performance of the
2 judge's duties.
3

1 **Canon 7. A Judge or Candidate for Judicial Office Shall Refrain From**
2 **Inappropriate Political Activity**

3
4
5 A. All judges and Candidates.

6
7 (1) Except as authorized in Sections 7B(2), 7C(2) and 7C(3), a judge or a candidate for
8 election or appointment to judicial office shall not:

9
10 (a) act as a leader or hold an office in a political organization;

11
12 (b) publicly endorse or publicly oppose another candidate for public office;

13
14 (c) make speeches on behalf of a political organization;

15
16 (d) attend political party functions; or

17
18 (e) solicit funds for, pay an assessment to or make a contribution to a political
19 organization or candidate, or purchase tickets for political party dinners or other
20 functions.

21
22 (2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial
23 office either in a primary or in a general election, except that the judge may continue to
24 hold judicial office while being a candidate for election to or serving as a delegate in a
25 state constitutional convention if the judge is otherwise permitted by law to do so.

26
27 (3) A candidate for a judicial office:

28
29 (a) shall be faithful to the law and maintain professional competence in it, and shall not
30 be swayed by partisan interests, public clamor, or fear of criticism;

31
32 (b) shall maintain the dignity appropriate to judicial office and act in a manner consistent
33 with the impartiality, integrity, and independence of the judiciary, and shall encourage
34 members of the candidate's family to adhere to the same standards of political conduct
35 in support of the candidate as apply to the candidate;

36
37 (c) shall prohibit employees and officials who serve at the pleasure of the candidate,
38 and shall discourage other employees and officials subject to the candidate's direction
39 and control from doing on the candidate's behalf what the candidate is prohibited from
40 doing under the Sections of this Canon;

41
42 (d) except to the extent permitted by Section 7C(1), shall not authorize or knowingly
43 permit any other person to do for the candidate what the candidate is prohibited from
44 doing under the Sections of this Canon;

45
46 (e) shall not:

1 (i) with respect to parties or classes of parties, cases, controversies, or issues that are
2 likely to come before the court, make pledges, promises, or commitments that are
3 inconsistent with the impartial performance of the adjudicative duties of the office; or
4

5 (ii) knowingly misrepresent the identity, qualifications, present position or other fact
6 concerning the candidate or an opponent;
7

8 (iii) while a proceeding is pending or impending in any court, make any public comment
9 that might reasonably be expected to affect its outcome or impair its fairness or make
10 any nonpublic comment that might substantially interfere with a fair trial or hearing. This
11 section does not apply to proceedings in which the judicial candidate is a litigant in a
12 personal capacity.
13

14 (iv) commend or criticize jurors for their verdict, other than in a court pleading, filing or
15 hearing in which the candidate represents a party in the proceeding in which the verdict
16 was rendered.
17

18 (f) may respond to personal attacks or attacks on the candidate's record as long as the
19 response does not violate Section 7A(3)(e).
20

21 B. Candidates Seeking Appointment to Judicial or Other Governmental Office. 22

23 (1) A candidate for appointment to judicial office or a judge seeking other governmental
24 office shall not solicit or accept funds, personally or through a committee or otherwise,
25 to support his or her candidacy.
26

27 (2) A candidate for appointment to judicial office or a judge seeking other governmental
28 office shall not engage in any political activity to secure the appointment except that:
29

30 (a) such persons may:
31

32 (i) communicate with the appointing authority, including any selection or nominating
33 commission or other agency designated to screen candidates;
34

35 (ii) seek support or endorsement for the appointment from organizations that regularly
36 make recommendations for reappointment or appointment to the office, and from
37 individuals; and
38

39 (iii) provide to those specified in Sections 7B(2)(a)(i) and 7B(2)(a)(ii) information as to
40 his or her qualifications for the office;
41

42 (b) a non-judge candidate for appointment to judicial office may, in addition, unless
43 otherwise prohibited by law:
44

45 (i) retain an office in a political organization,
46

1 (ii) attend political gatherings, and

2
3 (iii) continue to pay ordinary assessments and ordinary contributions to a political
4 organization or candidate and purchase tickets for political party dinners or other
5 functions.

6
7 C. Judges and Candidates Subject to Public Election.

8
9 (1) A candidate, including an incumbent judge, for a judicial office that is filled by public
10 election between competing candidates shall not personally solicit campaign funds, or
11 solicit attorneys for publicly stated support, but may establish committees of responsible
12 persons to secure and manage the expenditure of funds for the candidate's campaign
13 and to obtain public statements of support for his or her candidacy. Such committees
14 are not prohibited from soliciting campaign contributions and public support from any
15 person or corporation authorized by law. A candidate shall not use or permit the use of
16 campaign contributions for the private benefit of the candidate or members of the
17 candidate's family.

18
19 (2) A candidate for merit retention in office may conduct only limited campaign activities
20 until such time as the judge certifies that the judge's candidacy has drawn active
21 opposition. Limited campaign activities shall only include the conduct authorized by
22 subsection C(1), interviews with reporters and editors of the print, audio and visual
23 media, and appearances and speaking engagements before public gatherings and
24 organizations. Upon mailing a certificate in writing to the Secretary of State, Division of
25 Elections, with a copy to the Judicial Qualifications Commission, that the judge's
26 candidacy has drawn active opposition, and specifying the nature thereof, a judge may
27 thereafter campaign in any manner authorized by law, subject to the restrictions of
28 subsection A(3).

29
30 (3) A judicial candidate involved in an election or re-election, or a merit retention
31 candidate who has certified that he or she has active opposition, may attend a political
32 party function to speak in behalf of his or her candidacy or on a matter that relates to the
33 law, the improvement of the legal system, or the administration of justice. The function
34 must not be a fund raiser, and the invitation to speak must also include the other
35 candidates, if any, for that office. The candidate should refrain from commenting on the
36 candidate's affiliation with any political party or other candidate, and should avoid
37 expressing a position on any political issue. A judicial candidate attending a political
38 party function must avoid conduct that suggests or appears to suggest support of or
39 opposition to a political party, a political issue, or another candidate. Conduct limited to
40 that described above does not constitute participation in a partisan political party
41 activity.

42
43 D. Incumbent Judges. A judge shall not engage in any political activity except (i) as
44 authorized under any other Section of this Code, (ii) on behalf of measures to improve
45 the law, the legal system or the administration of justice, or (iii) as expressly authorized
46 by law.

1 E. Applicability. Canon 7 generally applies to all incumbent judges and judicial
2 candidates. A successful candidate, whether or not an incumbent, is subject to judicial
3 discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is
4 subject to lawyer discipline for his or her campaign conduct. A lawyer who is a
5 candidate for judicial office is subject to Rule 4-8.2(b) of the Rules Regulating The
6 Florida Bar.

7
8 F. Statement of Candidate for Judicial Office. Each candidate for a judicial office,
9 including an incumbent judge, shall file a statement with the qualifying officer within 10
10 days after filing the appointment of campaign treasurer and designation of campaign
11 depository, stating that the candidate has read and understands the requirements of the
12 Florida Code of Judicial Conduct. Such statement shall be in substantially the following
13 form:

14
15
16 STATEMENT OF CANDIDATE FOR JUDICIAL OFFICE

17
18
19 I, _____, the judicial candidate, have received, have read, and understand
20 the requirements of the Florida Code of Judicial Conduct.

21
22
23 Signature of Candidate

24
25
26 Date

27
28
29 COMMENTARY

30
31 Canon 7A(1). A judge or candidate for judicial office retains the right to participate in the
32 political process as a voter.

33
34 Where false information concerning a judicial candidate is made public, a judge or
35 another judicial candidate having knowledge of the facts is not prohibited by Section
36 7A(1) from making the facts public.

37
38 Section 7A(1)(a) does not prohibit a candidate for elective judicial office from retaining
39 during candidacy a public office such as county prosecutor, which is not "an office in a
40 political organization."

41
42 Section 7A(1)(b) does not prohibit a judge or judicial candidate from privately
43 expressing his or her views on judicial candidates or other candidates for public office.

44
45 A candidate does not publicly endorse another candidate for public office by having that
46 candidate's name on the same ticket.

1 Canon 7A(3)(b). Although a judicial candidate must encourage members of his or her
2 family to adhere to the same standards of political conduct in support of the candidate
3 that apply to the candidate, family members are free to participate in other political
4 activity.

5
6 Canon 7A(3)(e). Section 7A(3)(e) prohibits a candidate for judicial office from making
7 statements that commit the candidate regarding cases, controversies or issues likely to
8 come before the court. As a corollary, a candidate should emphasize in any public
9 statement the candidate's duty to uphold the law regardless of his or her personal
10 views. Section 7A(3)(e) does not prohibit a candidate from making pledges or promises
11 respecting improvements in court administration. Nor does this Section prohibit an
12 incumbent judge from making private statements to other judges or court personnel in
13 the performance of judicial duties. This Section applies to any statement made in the
14 process of securing judicial office, such as statements to commissions charged with
15 judicial selection and tenure and legislative bodies confirming appointment.

16
17 Canon 7B(2). Section 7B(2) provides a limited exception to the restrictions imposed by
18 Sections 7A(1) and 7D. Under Section 7B(2), candidates seeking reappointment to the
19 same judicial office or appointment to another judicial office or other governmental office
20 may apply for the appointment and seek appropriate support.

21
22 Although under Section 7B(2) non-judge candidates seeking appointment to judicial
23 office are permitted during candidacy to retain office in a political organization, attend
24 political gatherings and pay ordinary dues and assessments, they remain subject to
25 other provisions of this Code during candidacy. See Sections 7B(1), 7B(2)(a), 7E and
26 Application Section.

27
28 Canon 7C. The term "limited campaign activities" is not intended to permit the use of
29 common forms of campaign advertisement which include, but are not limited to,
30 billboards, bumperstickers, media commercials, newspaper advertisements, signs, etc.
31 Informational brochures about the merit retention system, the law, the legal system or
32 the administration of justice, and neutral, factual biographical sketches of the candidates
33 do not violate this provision.

34
35 Active opposition is difficult to define but is intended to include any form of organized
36 public opposition or an unfavorable vote on a bar poll. Any political activity engaged in
37 by members of a judge's family should be conducted in the name of the individual family
38 member, entirely independent of the judge and without reference to the judge or to the
39 judge's office.

40
41 Canon 7D. Neither Section 7D nor any other section of the Code prohibits a judge in the
42 exercise of administrative functions from engaging in planning and other official
43 activities with members of the executive and legislative branches of government. With
44 respect to a judge's activity on behalf of measures to improve the law, the legal system
45 and the administration of justice, see Commentary to Section 4B and Section 4C and its
46 Commentary.

1 **Application of the Code of Judicial Conduct**

2
3
4 This Code applies to justices of the Supreme Court and judges of the District Courts of
5 Appeal, Circuit Courts, and County Courts.

6
7 Anyone, whether or not a lawyer, who performs judicial functions, including but not
8 limited to a civil traffic infraction hearing officer , court commissioner, general or special
9 magistrate , domestic relations commissioner, child support hearing officer, or judge of
10 compensation claims, shall, while performing judicial functions, conform with Canons 1,
11 2A, and 3, and such other provisions of this Code that might reasonably be applicable
12 depending on the nature of the judicial function performed.

13
14 Any judge responsible for a person who performs a judicial function should require
15 compliance with the applicable provisions of this Code.

16
17 If the hiring or appointing authority for persons who perform a judicial function is not a
18 judge then that authority should adopt the applicable provisions of this Code.

19
20 **A. Civil Traffic Infraction Hearing Officer**

21
22 A civil traffic infraction hearing officer:

23
24 (1) is not required to comply with Section 5C(2), 5D(2) and (3), 5E, 5F, and 5G, and
25 Sections 6B and 6C.

26
27 (2) should not practice law in the civil or criminal traffic court in any county in which the
28 civil traffic infraction hearing officer presides.

29
30 **B. Retired/Senior Judge**

31
32 (1) A retired judge eligible to serve on assignment to temporary judicial duty, hereinafter
33 referred to as "senior judge," shall comply with all the provisions of this Code except
34 Sections 5C(2), 5E, 5F(1), and 6A. A senior judge shall not practice law and shall refrain
35 from accepting any assignment in any cause in which the judge's present financial
36 business dealings, investments, or other extra-judicial activities might be directly or
37 indirectly affected.

38
39 (2) If a retired justice or judge does not desire to be assigned to judicial service, such
40 justice or judge who is a member of The Florida Bar may engage in the practice of law
41 and still be entitled to receive retirement compensation. The justice or judge shall then
42 be entitled to all the rights of an attorney-at-law and no longer be subject to this Code.
43

1 **Effective Date of Compliance**

2
3
4 A person to whom this Code becomes applicable shall comply immediately with all
5 provisions of this Code except Sections 5D(2), 5D(3) and 5E and shall comply with
6 these Sections as soon as reasonably possible and shall do so in any event within the
7 period of one year.

8
9
10 **COMMENTARY**

11
12 If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the
13 prohibitions in Section 5E, continue to serve as fiduciary but only for that period of time
14 necessary to avoid serious adverse consequences to the beneficiary of the fiduciary
15 relationship and in no event longer than one year. Similarly, if engaged at the time of
16 judicial selection in a business activity, a new judge may, notwithstanding the
17 prohibitions in Section 5D(3), continue in that activity for a reasonable period but in no
18 event longer than one year.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION RULES

RULE 1. SCOPE AND TITLE

These rules apply to all proceedings before the Judicial Qualifications Commission involving the discipline, retirement or removal of justices of the Supreme Court, and judges of the District Courts of Appeal, Circuit Courts, and County Courts pursuant to Article V, Section 12 of the Constitution of the State of Florida, as amended, and removal or disqualification of members of the Commission. These rules shall be known as Florida Judicial Qualifications Commission Rules and may be abbreviated as "FJQCR."

RULE 2. DEFINITIONS

In these rules, the singular shall include the plural and vice-versa, and any singular personal pronoun shall include both feminine and masculine genders, and unless the context or subject matter otherwise requires:

- (1) "Commission" means the Judicial Qualifications Commission.

- (2) "Investigative Panel" means a division of the Commission vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and, upon a vote of a simple majority of the panel, submit formal charges to the hearing panel. The chair of the Commission shall be its chair.

- (3) "Hearing Panel" means a division of the Commission vested with the authority to receive and hear formal charges from the Investigative Panel. The Hearing Panel, by majority vote of its members may recommend to the Supreme Court that a judge be

subject to appropriate discipline. Upon a vote of four members, the panel may recommend to the Supreme Court the removal of a judge, as provided in Article 5, § 12, of the Constitution of the State of Florida, or the involuntary retirement of a judge for any permanent disability that seriously interferes with the performance of judicial duties.

(4) "Judge" means a justice of the Supreme Court and a judge of the District Court of Appeal, Circuit Court and County Court.

(5) "Chair" includes the acting chairman.

(6) "General Counsel" means any member of The Florida Bar designated by the Commission to serve as legal advisor to the Commission and Investigative Panel, and to perform such other duties as authorized by the Commission.

(7) "Counsel to the Hearing Panel" means any member(s) of The Florida Bar, designated by the Hearing Panel to serve as legal advisor to the Hearing Panel.

(8) "Special Counsel" means any member(s) of The Florida Bar designated by the Investigative Panel to gather and present evidence before the Investigative Panel or the Hearing Panel with respect to the charges against a judge and to represent the Commission in all proceedings, including investigations.

(9) "Shall" is mandatory and "may" is permissive.

(10) "Mail" and "mailed" include ordinary, registered, certified, or other form of United States mail, personal delivery, and delivery by a commercial delivery service.

(11) "Executive Director" means a person designated by the Commission to supervise its staff and to render such services to the Commission and its several panels as required, provided, however, that the Executive Director and staff will provide only ministerial or similar services to facilitate the activities of the Hearing Panel.

(12) "Member" means a member of the Commission.

(13) "Supreme Court" means the Supreme Court of Florida.

RULE 3. MEMBERSHIP AND JURISDICTION

(a) The membership of the Commission shall be as prescribed in Article V, Section 12 of the Constitution of the State of Florida and for such term as prescribed by general law. When a member ceases to be member of the appointing body from which that member was appointed or whenever any member becomes otherwise ineligible to hold office, that person's membership on the Commission shall terminate. The Chair shall promptly notify the appointing authority of the vacancy. In the event of a vacancy the Chair shall appoint a temporary replacement as provided in Rule 25.

(b) The Commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses, to take or to cause to be taken the deposition of witnesses, to order the production of books, records or other documentary evidence, and the power of contempt. In any matter within the jurisdiction of the Commission requiring the appearance of any person before the Commission or any member, any member shall have the power to issue subpoenas and to administer oaths and affirmations to such persons.

RULE 4. OFFICERS OF THE COMMISSION

The Commission shall elect a Chair and a Vice-Chair, each of whom shall serve for a term of two years. The Vice-Chair shall act as the chair of the Commission in the absence of the Chair. The Commission may appoint staff, including an executive director and General Counsel, as necessary to carry out its duties. The Commission will consider and decide matters relating to budget and other business of the Commission not specifically assigned to its panels. The Hearing Panel may appoint a Counsel to the Hearing Panel to serve as its legal advisor.

RULE 5. QUORUM OF COMMISSION

(a) A quorum for the transaction of the Commission's executive business shall be eight members except as otherwise provided in these rules.

(b) A quorum of the Investigative Panel shall be not less than five members of that Panel.

(c) A quorum of the Hearing Panel shall be not less than five of the members of that Panel.

RULE 6 INVESTIGATIVE PANEL RULES

(a) The Investigative Panel of the Commission, upon receiving factual information, not obviously unfounded or frivolous, or an individual complaint made under oath, indicating that a judge is guilty of willful or persistent failure to perform judicial duties,

or conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or that the judge has a disability seriously interfering with the performance of the judge's duties, which is, or is likely to become, permanent in nature, may make an investigation to determine whether formal charges should be instituted.

(b) The judge has no right to be present or to be heard during an investigation, but before the Investigative Panel determines that there is probable cause to initiate formal charges, the judge shall be notified of the investigation, the general nature of the subject matter of the investigation, and shall be afforded reasonable opportunity to make a statement before the Investigative Panel, personally or by the judge's attorney(s), verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct or disability. The judge shall not have the right to present other oral testimony or evidence, nor the right of confrontation or cross-examination of any person interviewed, called or interrogated by the Investigative Panel; provided that the Investigative Panel in its sole discretion may receive and consider documentary evidence, including affidavits submitted by a judge. Such notification shall be given personally or by registered or certified mail addressed to the judge at the judge's chambers or, if returned undelivered, at the judge's last known residence.

(c) The Investigative Panel shall have the right to require a judge to meet with it on an informal basis in reference to matters relating to the judge's duties.

(d) When a judge has received a notice of investigation, or a notice to appear before the Investigative Panel, or has requested such notification, the judge shall be promptly notified in writing if the investigation does not disclose probable cause to warrant further proceedings.

(e) The Investigative Panel shall have access to all information from all executive,

legislative and judicial agencies, including grand juries. At any time, on request of the Speaker of the House of Representatives or the Governor, the Commission shall make available all information in possession of the Commission for use in consideration of impeachment or suspension, respectively.

(f) When the Investigative Panel finds probable cause that formal charges should be filed against the judge, the Investigative Panel shall file a Notice of Formal Charges with the Clerk of the Supreme Court. The Investigative Panel shall designate one or more Special Counsel who shall prepare appropriate papers and pleadings, gather and present evidence before the Hearing Panel with respect to the charges against the judge, and otherwise act as counsel in connection with the prosecution of the charges against the judge, including the representation of the Commission in connection with any Commission or judicial proceedings. The Investigative Panel shall cause to be served on the judge a copy of the Notice of Formal Charges. Such proceedings shall be styled:

“BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION”

“Inquiry Concerning a Judge, No. _____”

(g) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based, and shall advise the judge of the judge's right to file a written answer to the charges against within 20 days after service of the notice upon the judge.

(h) Service of the notice shall be made personally or by registered or certified mail addressed to the judge at the judge's chambers or, if returned undelivered, at the judge's last known residence.

(i) After the notice has been filed, any notice or other material shall be mailed to the judge at the judge's chambers or residence address, or to the judge's attorney(s), if any.

(j) The Investigative Panel may reach agreement with a judge on discipline or disability, and such stipulation shall be transmitted by it directly to the Supreme Court to accept, reject or modify in whole or in part.

RULE 7. HEARING PANEL RULES

(a) The Hearing Panel shall receive, hear and determine formal charges from the Investigative Panel. The Hearing Panel shall select one of its members as Chair.

(b) The Chair of the Hearing Panel shall dispose of all pretrial motions. These motions may be heard by teleconference or be determined with or without hearings. The Chair's disposition of motions shall be subject to review by the full Hearing Panel.

RULE 8. SUSPENSION OF JUDGE

Before or after the filing of a Notice of Formal Charges, the Investigative Panel may, in its discretion, issue its order directed to the judge ordering the judge to show cause before it why that panel should not recommend to the Supreme Court that the judge be suspended from office, either with compensation or without compensation, while the inquiry is pending. The order to show cause shall be returnable before the Investigative Panel at a designated place and at a time certain, at which place and time the Investigative Panel shall consider the question of suspension and any action

thereto. Thereafter, and upon the filing of a Notice of Formal Charges with the Supreme Court, the Investigative Panel, not less than two-thirds of its members concurring, may recommend to the Supreme Court that the judge be suspended from performing the duties of office, either with or without compensation, pending final determination of the inquiry. If the Investigative Panel recommends suspension, such recommendation shall have incorporated therein a record of the proceedings of the Investigative Panel in relation to the order to show cause.

RULE 9. ANSWER

Within 20 days after service of the Notice of Formal Charges, the judge may serve and file an Answer, a copy of which shall be served on the Chair of the Hearing Panel and the original of which shall be filed with the Clerk of the Supreme Court. If the judge desires that all hearings be heard in the county of the judge's residence, the judge shall so demand in writing at the time the initial Answer is filed.

RULE 10. FILING

(a) Upon the filing of the Notice of Formal Charges against a judge with the Clerk of the Supreme Court of Florida, the Notice of Formal Charges and all subsequent proceedings before the Hearing Panel shall be public.

(b) The original of all pleadings subsequent to the Notice of Formal Charges shall be filed with the Clerk of the Supreme Court of Florida, which office is designated by the Commission for receiving, docketing, filing and making such records available for public inspection. A duplicate original of all pleadings filed in the proceedings shall be served

on each party, with a copy to the Chair of the Hearing Panel.

RULE 11. SETTING FOR HEARING

After the filing of an Answer or the expiration of the time for its filing, the Hearing Panel shall set a time and place for a hearing and shall give notice of such hearing at least 20 days prior to the date set. If the judge timely requests that the hearing be held in the county of the judge's residence, it shall be so held unless the Hearing Panel, by an affirmative vote of two-thirds of its members, determines otherwise.

RULE 12. PROCEDURE

(a) In all proceedings before the Hearing Panel, the Florida Rules of Civil Procedure shall be applicable except where inappropriate or as otherwise provided by these rules.

(b) Special Counsel shall, upon written demand of a party or counsel of record, promptly furnish the following:

The names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Investigative Panel which are relevant to the subject matter of the hearing and which have not previously been furnished, except those documents confidential under the Constitution of the State. When good cause is shown this rule may be waived.

(c) At the time and place set for hearing, the Hearing Panel may proceed with the hearing whether or not the judge has filed an Answer or appears at the hearing.

RULE 13. DISABILITY

Upon receiving information that a judge is suffering a possible physical or mental disability which seriously interferes with the performance of the judge's duties, the Investigative Panel, upon a majority vote, may order the judge to submit to a physical and/or mental examination and/or may give notice of formal charges pursuant to Rule 6, supra. If the judge fails to submit to such examination within the time ordered, the Investigative Panel may recommend to the Supreme Court that the judge be suspended without compensation until such time as the judge complies with the Panel's order.

RULE 14. EVIDENCE

At a hearing before the Hearing Panel, legal evidence only shall be received and oral evidence shall be taken only on oath or affirmation.

RULE 15. PROCEDURAL RIGHTS OF JUDGE BEFORE THE HEARING PANEL

(a) In all hearings before the Hearing Panel, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by attorney(s), and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the trial proceedings has been prepared at the expense of the Commission, a copy thereof shall be furnished without cost to the judge. The judge shall also have the right, without any order or approval, to have all or any portion of the

proceedings transcribed at the judge's expense.

(c) If the judge is adjudicated to be incapacitated, the panel with jurisdiction shall appoint an attorney ad litem unless there is a duly appointed legal guardian authorized to represent the judge, or to appoint counsel to represent the judge. The guardian or attorney ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if with capacity, and whenever these rules provide for the serving or giving notice or sending any matter to the judge, a copy of such notice or matter also shall be served, given or sent to the guardian or attorney ad litem.

RULE 16. AMENDMENTS TO NOTICE OR ANSWER

The Hearing Panel may in the interest of justice allow or require amendments to the Notice of Formal Charges and may allow amendments to the Answer. In case such amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters charged. If requested by the judge, the Hearing Panel may refer to the Investigative Panel any new matter presented or alleged in such amendment, as to which there has been no previous finding of probable cause by the Investigative Panel.

RULE 17. EXTENSION OF TIME

The Chair of the Hearing Panel may extend the time for filing an Answer or for the commencement of a hearing before the Hearing Panel.

RULE 18. HEARING ADDITIONAL EVIDENCE

The Hearing Panel may order a hearing for the taking of additional evidence at any time while a matter is pending before it. The order shall set the time and place of the hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be sent by mail at least ten days prior to the date of the hearing.

RULE 19. HEARING PANEL VOTE

After conclusion of the hearing and consideration of the issues presented for decision, the Hearing Panel shall determine by vote the judge's guilt or innocence of formal charges. If the Hearing Panel determines by a two-thirds vote that the judge is guilty of one or more of the charges so specified, it shall then proceed to determine the discipline to be recommended. The vote of four members of the Hearing Panel shall be required to recommend removal of the judge from office or for medical retirement of a judge. Upon a simple majority vote of a quorum of the Hearing Panel, the Panel may recommend to the Supreme Court that the justice or judge be subject to other appropriate discipline. Failure to recommend the imposition of any penalty by the prescribed affirmative vote of the Hearing Panel shall constitute a dismissal of the proceedings.

**RULE 20. CERTIFICATION OF HEARING PANEL RECOMMENDATIONS TO
SUPREME COURT**

If the Hearing Panel dismisses the formal charges, the Hearing Panel shall promptly file a copy of the dismissal order certified by the Chair of the Hearing Panel with the Clerk of the Supreme Court. Upon making a determination recommending discipline, retirement or removal of a judge, the Hearing Panel shall file a copy of the recommendation certified by the Chair of the Hearing Panel, together with a transcript and the findings and conclusions, with the Clerk of the Supreme Court and shall mail to the judge and to the judge's attorney(s) notice of such filing, together with a copy of such recommendations, findings, and conclusions.

RULE 21. REVIEW OF PROCEEDINGS

To the extent necessary to implement this rule, the Florida Rules of Appellate Procedure and Rule 2.140 of the Florida Rules of Judicial Administration shall be applicable to reviews of Investigative and Hearing Panel proceedings by the Supreme Court.

RULE 22. SUBPOENAS

Subpoenas for the attendance of witnesses and the production of documentary evidence in any proceedings shall be issued as follows:

(a) Judicial Qualifications Commission. Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery, and for the appearance of any person before any panel of the Commission or any member, may be issued by any

member, the General Counsel, Counsel to the Hearing Panel, or Special Counsel, and be served in the manner provided by law for the service of witness subpoenas in a civil action.

(b) Contempt. Any person who, without adequate excuse, fails to obey such a subpoena of the Commission or a panel of the Commission served upon that person may be cited for contempt of the Commission in the manner provided in these rules.

RULE 23. CONFIDENTIALITY OF PROCEEDINGS

(a) Until formal charges against a judge are filed by the Investigative Panel of the Commission with the Clerk of the Supreme Court, all proceedings by or before the Commission shall be confidential. Upon a finding of probable cause and the filing by the Investigative Panel of the Commission with the Clerk of such formal charges against a judge, such charges and all further proceedings before the Hearing Panel shall be public.

(b) All notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked "confidential."

(c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding, the subject matter thereof, or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

(d) Violation of this Rule by a member of the Commission shall subject that member, after written notice and hearing, to removal from office by an affirmative vote of eight

members of the Commission and shall constitute contempt of the Commission which may be enforced by appropriate proceedings in the Supreme Court of Florida. (See Rule 26.)

RULE 24. INTERESTED PARTY

A judge who is a member of the Commission or of the Supreme Court shall be disqualified from participation in such capacity in any proceedings involving the judge's own discipline, retirement or removal.

RULE 25. DISQUALIFICATION

(a) Whenever a judge against whom formal proceedings have been instituted, shall file with the Hearing Panel an affidavit that the judge fears the judge will not receive a fair hearing before the Hearing Panel on the charges because of the prejudice of one or more members of the Hearing Panel against the judge, and the facts stated as the basis for making the affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not kin to the judge or the judge's attorney, or if any member of the Hearing Panel shall voluntarily recuse himself, such member or members of the Hearing Panel shall proceed no further therein and shall be disqualified from hearing the charges. The affidavit shall state the facts and the reasons for the belief that any such prejudice exists, shall specify the member(s) of the Hearing Panel allegedly prejudiced, and shall be filed not more than 15 days after service of the Notice of Formal Charges upon the judge charged.

(b) The Chair of the Commission shall request from each of the appointing authorities a

list of four persons who may temporarily serve in the absence of incapacitated or disqualified members. The appointing authorities are the Conference of District Court of Appeal Judges, the Conference of Circuit Court Judges, the Conference of County Court Judges, the Board of Governors of The Florida Bar, and the Governor of Florida. Upon the disqualification of or in the absence of a member of the Hearing Panel, the replacement shall be chosen by the Chair from those listed by the appropriate appointing authority. Each such replacement shall be from the same category as the disqualified member(s) set forth in Section 12(a), Article V of the Constitution of the State of Florida.

(c) The judge may within 15 days after receiving notice of such ad hoc appointment, file a like affidavit as to that appointee, which shall be supported in substance by an affidavit of two citizens as set forth above, in which event the ad hoc appointee shall not be disqualified on account of alleged prejudice against the judge unless the appointee admits that it is then a fact that the appointee is prejudiced against the judge, or unless a majority of the Hearing Panel, which may include any ad hoc appointee, holds that the appointee is prejudiced against the judge, in which event the same ad hoc appointment procedure set forth above shall be followed until a qualified person has been appointed.

(d) A judge moved against by the Commission may, by affidavit, suggest the disqualification of a member or members of the Commission unsupported by two citizens, but in such event the determination of the matter of disqualification shall be by majority vote of the panel having jurisdiction unless the person sought to be disqualified voluntarily recuses himself.

RULE 26. CONTEMPT

Should any witness fail, without justification, to respond to the lawful subpoena of the Commission or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding of the Commission, a motion may be filed in the name of the Commission before the Circuit Court of the County in which the contemptuous act was committed, alleging the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of an alleged contempt of the Commission. Such motion shall pray for the issuance of an order to show cause before the Circuit Court why the Circuit Court should not find the person in contempt of the Commission and why that person should not be punished by the Court therefor. The Circuit Court shall issue such orders and judgments therein as the Court deems appropriate.

RULE 27. APPOINTMENTS

The Chair of the Commission shall assign the members to the Investigative Panel and the Hearing Panel. The Chair shall appoint to the Investigative Panel four judges, two members of The Florida Bar and three non-lawyers. The Chair shall appoint to the Hearing Panel two judges, two members of the Bar of Florida and two non-lawyers. The membership on the panels may change at a time and in a manner determined by the Chair, provided that no member shall vote as a member of both the Investigative Panel and Hearing Panel in the same proceeding.

VI. APPLICATION FOR NOMINATION TO THE COURT

APPLICATION FOR NOMINATION TO THE COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: _____ Florida Bar No.: _____

GENERAL: _____ Social Security No.: _____

1. Name _____ E-mail: _____

Date Admitted to Practice in Florida: _____

Date Admitted to Practice in other States: _____

2. State current employer and title, including professional position and any public or judicial office.

3. Business address: _____

City _____ County _____ State _____ ZIP _____

Telephone () - _____ FAX () - _____

4. Residential address: _____

City _____ County _____ State _____ ZIP _____

Since _____ Telephone () - _____

5. Place of birth: _____

Date of birth: _____ Age: _____

6a. Length of residence in State of Florida: _____

6b. Are you a registered voter? Yes No

If so, in what county are you registered? _____

7. Marital status: _____

If married: Spouse's name _____

Date of marriage _____

Spouse's occupation _____

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

8. Children
Name(s) *Age(s)* *Occupation(s)* *Residential address(es)*

9. Military Service (including Reserves)
Service *Branch* *Highest Rank* *Dates*

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite

- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

EDUCATION:

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
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18b. List and describe academic scholarships earned, honor societies or other awards.

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
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PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

Court or Administrative Body

Date of Admission

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

Position

Name of Firm

Address

Dates

22. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

23. What percentage of your appearance in courts in the last five years or last five years of practice (include the dates) was in:

	Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ %	
Federal Trial	_____ %	Criminal	_____ %	
Federal Other	_____ %	Family	_____ %	
State Appellate	_____ %	Probate	_____ %	
State Trial	_____ %	Other	_____ %	
State Administrative	_____ %			
State Other	_____ %			
	_____ %			
TOTAL	_____ 100 %	TOTAL	_____ 100 %	

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury?	_____	Non-jury?	_____
Arbitration?	_____	Administrative Bodies?	_____

25. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

26. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain in full.

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

27c. During the last five years, how frequently have you appeared at administrative hearings?
 _____ average times per month

27d. During the last five years, how frequently have you appeared in Court?
 _____ average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? _____%
 Defendants? _____%

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.
30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.
31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

32d. If you have had prior judicial or quasi-judicial experience,

- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.
- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

- (iii) List citations of any opinions which have been published.
- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.
- (v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.
- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.
- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

BUSINESS INVOLVEMENT:

- 33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.
- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.
- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

POSSIBLE BIAS OR PREJUDICE:

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you as a general proposition believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?
Yes _____ No _____ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No _____ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No _____ If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

- 37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.
38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.
39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.
40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).
41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.
42. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.
- 43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?
 Yes No If no, please explain. _____
- 43b. Have you ever paid a tax penalty?
 Yes No If yes, please explain what and why. _____
- 43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

HONORS AND PUBLICATIONS:

- 44. If you have published any books or articles, list them, giving citations and dates.
- 45. List any honors, prizes or awards you have received. Give dates.
- 46. List and describe any speeches or lectures you have given.
- 47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No

PROFESSIONAL AND OTHER ACTIVITIES:

- 48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.
- 48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.
- 48c. List your hobbies or other vocational interests.
- 48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.
- 48e. Describe any pro bono legal work you have done. Give dates.

SUPPLEMENTAL INFORMATION:

- 49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?
- 49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

50. Describe any additional education or other experience you have which could assist you in holding judicial office.
51. Explain the particular potential contribution you believe your selection would bring to this position.
52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.
53. Give any other information you feel would be helpful to the Commission in evaluating your application.

REFERENCES:

54. List the names, addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for judicial position and of whom inquiry may be made by the Commission.

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(I), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this _____ day of _____, 20_____.

Printed Name

Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date _____

List Last 3 years _____

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date _____

List Last 3 years _____

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date _____

List Last 3 years _____

4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date _____

List Last 3 years _____

**FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST**

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of _____, 20____ was \$_____.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ _____

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments*, ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

SIGNATURE

STATE OF FLORIDA

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____ by _____

(Signature of Notary Public—State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. **Your Social Security Number is not required and you should redact it from any documents you file.** If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address **if you submit a written request for confidentiality.**

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

- form;
- (1) The aggregate value of household goods and personal effects, as reported in Part B of this form;
 - (2) The value of all assets worth over \$1,000, as reported in Part B; and
 - (3) The total value of any assets worth less than \$1,000 that were not reported or included in the category of “household goods and personal effects.”

To total the amount of your liabilities, add:

- (1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the “joint and several liabilities not reported above” portion; and,
- (2) The total amount of unreported liabilities (including those under \$1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN \$1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds \$1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than \$1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property’s location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. **Do not list simply “stocks and bonds” or “bank accounts.”** For example, list “Stock (Williams Construction Co.),” “Bonds (Southern Water and Gas),” “Bank accounts (First

National Bank), "Smith family trust," Promissory note and mortgage (owed by John and Jane Doe)."

How to Value Assets:

- Value each asset by its fair market value on the date used in Part A for your net worth.

- Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

- Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

- Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

- Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

- Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

- Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

- Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

- Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded \$1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A "contingent liability" is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a "co-maker" on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

- Generally, the amount of the liability is the face amount of the debt.

- If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

— If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship, report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe \$10,000 to a bank for student loans, \$5,000 for credit card debts, and \$60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank (\$10,000 being the amount of that liability) and the name and address of the savings and loan (\$60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the “Liabilities in Excess of \$1,000” part of the form. Example: You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than \$1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

“Income” means the same as “gross income” for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than \$1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded \$1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than \$1,000. Do not aggregate income from all of these investments.

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than \$1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will **not** have anything to report **unless**:

(1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and

(2) You received more than \$1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than \$1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded \$1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: _____

JNC Submitting To: _____

Name (please print): _____

Current Occupation: _____

Telephone Number: _____ Attorney No.: _____

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic
 Hispanic
 Black
 American Indian/Alaskan Native
 Asian/Pacific Islander

County of Residence: _____

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

**DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)**

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

**CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)**

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of
Applicant:

Signature of Applicant:

Date:

VII. FLORIDA CASES & ADVISORY OPINIONS

ADVISORY OPINION TO the GOVERNOR
RE JUDICIAL VACANCY
DUE TO RESIGNATION.

No. SC10-1186.

Supreme Court of Florida.

July 12, 2010.

Background: The Governor requested an advisory opinion from the Supreme Court regarding judicial vacancy of a county court judge due to resignation.

Holding: The Supreme Court held that vacancy for extended period created by retirement of incumbent judge was required to be filled by gubernatorial appointment.

Question answered.

1. Judges ⇄3

Incumbent county court judge, whose candidacy for new term of office was uncontested, was deemed elected to serve as a judge on the county court for new term. West's F.S.A. § 105.051.

2. Judges ⇄8

Vacancy for extended period created by retirement of incumbent county court judge was required to be filled by gubernatorial appointment, where judge resigned after election process for new term of office, was reelected without opposition after the election, and intended to resume duties of office during new term of office when it was convenient for him to do so; appointment process would avoid an extended vacancy in the county courts and would allow voters to exercise their will regarding the judicial seat in the next general election. West's F.S.A. Const. Art. 5, §§ 10(b), 11(b).

Erik M. Figlio, General Counsel, J. Andrew Atkinson and Shachi Mankodi, Assistant General Counsels, Carly A. Hermanson, Deputy General Counsel, Executive Office of the Governor, Tallahassee, FL, for The Honorable Charles J. Crist, Jr., Governor of Florida.

Charles F. Beall, Jr. of Moore, Hill and Westmoreland, P.A., Pensacola, Florida, on behalf of Michelle A. Inere, John L. Miller and Clara E. Smith; and Joseph L. Hammons of The Hammons Law Firm, P.A., Pensacola, FL, on behalf of Judge David B. Ackerman, for Interested Parties.

PER CURIAM.

By letter dated June 21, 2010, Governor Charlie Crist requested our opinion on a question of constitutional interpretation involving his executive powers and duties with regard to a judicial vacancy in the Escambia County Court. This request and our response are made pursuant to article IV, section (1)(c) of the Florida Constitution.

Governor Crist's letter states as follows:

By letter dated May 24, 2010, Judge David B. Ackerman, formerly a county court judge on the Escambia County Court, submitted a letter of resignation to my office. I accepted Judge Ackerman's resignation on May 28, 2010.

Prior to his resignation, Judge Ackerman's term of office was scheduled to expire on January 3, 2011. The new term, commencing on January 4, 2011, is scheduled to be filled by regular election this year. Pursuant to section 105.031, Florida Statutes, the time for qualifying to run for this seat began at noon on April 26, 2010, and ended at noon on April 30, 2010. Judge Ackerman submitted qualifying papers on April 28,

2010. No other candidate qualified during the qualifying period.

There will be an actual vacancy on the Escambia County Court for a period of at least seven months if the vacancy resulting from Judge Ackerman's resignation is to be filled by election. As a result of his qualifying unopposed, Judge Ackerman will be deemed elected for a new term commencing January 4, 2011, pursuant to section 105.051(1)(a), Florida Statutes. However, I have been informed that Judge Ackerman does not intend to resume his judicial duties until February 1, 2011.

....

In previous advisory opinions, the Justices of this Court have opined that the Governor's power of appointment outlined in [article V, section 11(b) of the Florida Constitution] yields to the election process, with respect to contested seats, at the commencement of the qualifying period. The primary rationale for that exclusion has been the Justices' view that tension exists between Article V, section 11(b) and Article V, section 10(b)(1) and 10(b)(2), which state that the election of circuit court and county court judges "shall be preserved," absent referendum of the voters to adopt retention elections as a local option.... The Justices have never addressed this tension in circumstances such as those presented here, where an incumbent judge resigns following an uncontested qualifying period.

....

In light of the foregoing, I respectfully request an opinion of the Justices of the Supreme Court as to whether the Governor's constitutional responsibility to fill vacancies on circuit and county courts by appointment exists when a vacancy on such a court occurs after the conclusion of a qualifying period in

which no candidates other than the incumbent judge have qualified for election.

Letter from Governor Charlie Crist to Chief Justice Peggy A. Quince dated June 21, 2010 at 1-3. On June 22, 2010, this Court issued an order permitting all interested parties to file briefs on an expedited basis. Governor Crist, three of the individuals nominated by the First Circuit Judicial Nominating Commission to fill the judicial vacancy, and Judge Ackerman filed briefs.

ANALYSIS

Florida Constitution article X, section 3, states that a "[v]acancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term." Here, a vacancy was created on May 28, 2010, when Governor Crist accepted Judge Ackerman's resignation.

As we explained in *Advisory Opinion to Governor re Appointment or Election of Judges*, 983 So.2d 526, 528 (Fla.2008) (*Appointment or Election of Judges 2008*), the Florida Constitution contains two provisions that regard the filling of judicial vacancies. Article V, section 11(b), provides that "[t]he governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six per-

sons nominated by the appropriate judicial nominating commission.” Article V, section 10(b)(1)-(2), states that the election of circuit and county court judges “shall be preserved . . . unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election.”

We have interpreted the interplay between article V, section 11(b), and article V, section 10(b), by holding that when a vacancy occurs in the county or circuit courts before the qualifying period for the seat commences, the vacancy should be filled by appointment, but once the election process begins, such a vacancy should be filled by election. *Advisory Opinion to Governor re Sheriff & Judicial Vacancies Due to Resignations*, 928 So.2d 1218, 1220 (Fla.2006) (*Sheriff & Judicial Vacancies*); *Appointment or Election of Judges 2008*, 983 So.2d at 528. In order to promote consistency in the process of filling judicial vacancies, we identified the beginning of the statutory qualifying period as a fixed point to mark the commencement of the election process. *Appointment or Election of Judges 2008*, 983 So.2d at 529.

[1] Here, the election process began on April 26, 2010, and Judge Ackerman alone qualified for election. Because Judge Ackerman’s candidacy was uncontested, pursuant to section 105.051, Florida Statutes (2009), he was deemed elected to serve as a judge on the Escambia County Court for the term beginning January 4, 2011. Thus, this particular election process ended on April 30, 2010, when the qualifying period ended, and no individual other than Judge Ackerman can now fill the vacancy by election.

The circumstances here stand apart from the circumstances we have previously addressed. See *Appointment or Election of Judges*, 983 So.2d at 530 (holding that a

vacancy created “during a qualifying period in which any candidate qualifies for the judicial office is to be filled by election” where the vacancy arose due to the involuntary retirement of a county court judge during the qualifying period); *In re Advisory Opinion to Governor re Appointment or Election of Judges*, 824 So.2d 132, 135–36 (Fla.2002) (holding that a vacancy created when a judge involuntarily retired after the conclusion of the qualifying period—in which the incumbent judge did not qualify for election but three other candidates did qualify—was to be filled by election); *Sheriff & Judicial Vacancies*, 928 So.2d at 1220 (holding that vacancy occurred when the Governor accepted the resignation of a circuit court judge on April 14, 2006, and that because the vacancy was created before the qualifying period commenced on May 8, 2006, the position was to be filled by appointment).

[2] Here, an incumbent office holder resigned *after* the election process had effectively *concluded*. A vacancy was thus created at a time when the election process had ceased. There is no issue here with regard to preserving the right of the people to elect county court judges. Instead, the issue is whether an incumbent judge who had been reelected without opposition may then retire from office and leave a judgeship vacant for an extended period before resuming the duties of the office when it is convenient for him to do so.

The consideration that must predominate here is the right of the people of Escambia County to the services of a county judge when the incumbent has presented himself to the people for reelection but then has laid aside the duties of his office. Cf. *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla.1992) (“Vacancies in office are to be avoided whenever possible. We are confident that the framers of article V

intended that the nominating and appointment process would be conducted in such a way as to avoid or at least minimize the time that vacancies exist. Judges are encouraged to and do submit their resignations . . . at a time that permits the process to proceed in an orderly manner and keep the position filled.”). A judgeship is not an office that may be temporarily forsaken at will for personal benefit. When a vacancy arises from such circumstances, the Governor may properly fill the vacancy by appointment pursuant to article V, section 11(b).

We are therefore of the opinion that the vacancy created by Judge Ackerman’s retirement should be filled by gubernatorial appointment. Under these circumstances, the appointment process will avoid an extended vacancy in the Escambia County Courts and will allow the voters to exercise

their will regarding the judicial seat in the 2012 general election.

CONCLUSION

We answer Governor Crist’s question about the resignation of Judge Ackerman by stating that it is our opinion that this vacancy should be filled by appointment.

It is so ordered.

CANADY, C.J., and PARIENTE,
LEWIS, QUINCE, POLSTON,
LABARGA, and PERRY, JJ., concur.



Robert J. PLEUS, Jr., Petitioner,

v.

Charles J. CRIST, Jr., Governor,
Respondent.

No. SC09-565.

Supreme Court of Florida.

July 2, 2009.

Background: Retired judge of district court of appeal filed a petition for writ of mandamus as original proceeding before the Supreme Court, seeking order compelling Governor to fill the vacancy created by petitioner's mandatory resignation.

Holdings: The Supreme Court, Labarga, J., held that

- (1) Governor was bound to appoint a nominee from the Judicial Nominating Commission's (JNC) certified list, and
- (2) Governor was without authority to reject the certified list and request that a new list be certified.

Petition granted, but issuance of writ withheld.

1. Constitutional Law ⇌963

The interpretation of the State Constitution is a question of law for the Supreme Court.

2. Constitutional Law ⇌593

In interpreting a constitutional provision, the Supreme Court's analysis is straightforward; if the language in the provision is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.

3. Constitutional Law ⇌584

The fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers and the provision must be construed or inter-

preted in such manner as to fulfill the intent of the people, never to defeat it.

4. Constitutional Law ⇌591

In construing a constitutional provision, the Supreme Court is not at liberty to add words that were not placed there originally or to ignore words that were expressly placed there at the time of adoption of the provision.

5. Judges ⇌3

Governor had a clear legal duty, under the Florida Constitution, to appoint a nominee from the Judicial Nominating Commission's (JNC) certified list, for appointment as judge of district court of appeal within sixty days of the certification, despite Governor's failure to act within the mandated time frame. West's F.S.A. Const. Art. 5, § 11(c).

6. Judges ⇌3

In considering appointment of judge of district court of appeal, Governor was without authority under the constitution to reject the certified list of the Judicial Nominating Commission (JNC) and request that a new list be certified. West's F.S.A. Const. Art. 5, § 11(c).

7. Mandamus ⇌3(1), 10, 12

To be entitled to mandamus relief, the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.

8. Mandamus ⇌3(4)

Writ of mandamus, rather than action for declaratory judgment in circuit court, was required to effectuate the intent of framers to avoid or minimize further delay in addressing Governor's failure to fill judicial vacancy on district court of appeal; action for declaratory judgment was not an

adequate legal remedy, given passage of almost six months since the judge's resignation became effective. West's F.S.A. Const. Art. 5, § 11(c).

Talbot C. D'Alemberte of D'Alemberte and Palmer, Tallahassee, FL, for Petitioner.

Jason Gonzalez, Gerald B. Curington, Erik M. Figlio, and Carly A. Hermanson, Executive Office of the Governor, Tallahassee, FL, for Respondent.

Siobhan Helene Shea, Chair, Appellate Practice Section, The Florida Bar, Tallahassee, FL, on behalf of Appellate Practice Section, The Florida Bar; Keersten Heskin Martinez of Fisher, Rushmer, Werrenrath, Dickson, Talley and Dunlap, P.A., Orlando, FL, and Joyce C. Fuller of J.C. Fuller, P.A., Winter Park, FL, on behalf of The Central Florida Association of Women Lawyers; and Charles E. "Chuck" Hobbs, II, Tallahassee, FL, on behalf of The Florida State Conference of Branches of the NAACP, as Amici Curiae.

LABARGA, J.

Petitioner Robert J. Pleus, Jr., a retired judge of the Fifth District Court of Appeal, filed a petition for writ of mandamus in this Court seeking an order compelling Governor Crist to fill the vacancy created

in the Fifth District Court of Appeal by the Petitioner's mandatory resignation.¹ The issue raised by the petition concerns the extent of the Governor's authority in making judicial appointments under the Florida Constitution.² Specifically, we are called upon to decide whether the Governor must fill the vacancy created by Petitioner's resignation with a judicial appointment from the list of nominees certified to him on November 6, 2008, and do so within sixty days of receiving that list.³ Having reviewed the parties' pleadings, as well as the briefs filed by Amici Curiae,⁴ and in consideration of the oral arguments, we conclude that the Florida Constitution mandates that the Governor appoint a judicial nominee within sixty days of the certification of nominees by the Judicial Nominating Commission for the Fifth Appellate District. We also conclude that, within this process, the Governor is not provided the authority under the constitution to reject the certified list and request that a new list be certified.

I. Background

The facts are not in dispute. Petitioner tendered his resignation as judge of the Fifth District Court of Appeal to the Governor on September 2, 2008, to become effective on January 5, 2009. Having accepted the Petitioner's letter of resignation, the Governor requested that the Judicial Nominating Commission for the Fifth

1. Article V, section 8, of the Florida Constitution provides, in pertinent part, that "[n]o justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served." Petitioner has served on the Fifth District Court of Appeal as a senior judge since his retirement.
2. This case does not involve any claim that the process for the selection of the nominees was tainted by impropriety or illegality. Our decision in this case should not be understood

to suggest that no remedy would be available to address such a tainted process.

3. We have jurisdiction. See art. V, § 3(b)(8), Fla. Const.
4. Amicus briefs were filed, with leave of Court, by the Appellate Practice Section of The Florida Bar, the Central Florida Association for Women Lawyers, and the Florida State Conference of Branches of the National Association for the Advancement of Colored People.

Appellate District (hereinafter “JNC”) provide him with a list of qualified applicants. A total of twenty-six applicants sought the appointment. The JNC reviewed the applications and conducted interviews. On November 6, 2008, the JNC certified to the Governor a list of six nominees for appointment to the Fifth District Court of Appeal.

In a letter dated December 1, 2008, the Governor advised the JNC Chair that he was rejecting the certified list of nominees. In the interest of diversity in the courts, the Governor requested that the JNC reconvene to consider the applications of three African-Americans who had applied to fill the vacancy. The JNC met to consider the Governor’s request, and resubmitted the original list of nominees to the Governor. The Governor has not filled the vacancy to date.

II. History and Intent of Article V, Section 11(c), Florida Constitution

Article V, section 11(c), governs the time periods applicable to judicial nominating commissions in nominating judicial applicants to fill vacancies and to the governor in making judicial appointments. That provision of the constitution expressly requires the following: “The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.”

In the past, we have discussed at length the origin and purpose of article V, section 11, of the Florida Constitution, explaining the restraints the constitutional provision places on the Governor’s appointment power:

In the deliberations of the Florida Constitutional Revision Commission, it

was proposed that judicial nominating commissions be created to screen applicants for judicial appointments within their respective jurisdictions and to nominate the three best qualified persons to the Governor for his appointment. *The commissions were to be an arm of the executive appointive power to supplant, at least in part, the Governor’s so-called “patronage committee” composed of political supporters, to insure that politics would not be the only criteria in the selection of judges, and to increase generally the efficiency of the judicial appointive process.*

....

... [T]he judicial nominating commissions [of the Revised Article V of the Florida Constitution, effective January 1, 1973] are elevated to constitutional stature and permanence. *The process of non-partisan selection has been strengthened even further because nominations made by the judicial nominating commissions have now been made binding upon the Governor, as he is under a constitutional mandate to appoint “one of not fewer than three persons nominated by the appropriate judicial nominating commission.” Moreover, the Governor must make the appointment within sixty days after the nominations have been certified to him.* Fla. Const., art. V (Rev.), § 11(a), F.S.A. However, this same provision confers upon the Governor the express power to make the final and ultimate selection by appointment.

....

... *The purpose of the judicial nominating commission is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge. When the commission has completed its investigation and*

reached a conclusion, the persons meeting the qualifications are nominated. In this respect the commissioners act in an advisory capacity to aid the Governor in the conscientious exercise of his executive appointive power.

...

This appointive power is diluted by the Constitution to the extent that a nomination must be made by the appropriate commission, unrestrained by the influence of the Governor. To allow the Governor to guide the deliberations of the commissions by imposing rules of procedure could destroy its constitutional independence. This does not preclude him from making recommendations concerning rules.

Seeking to remove some of the discretion of the Governor's office in the appointment of judicial officers is an apparent goal of the people which can best be attained by providing discretion to their commissions to promulgate rules of procedure for their hearings and findings, independent of any of the three standard recognized divisions of state government. While the function of the commissions is inherently executive in nature, the mandate for the commissions comes from the people and the Constitution, not from the Legislature, the Governor, or the Courts.

In re Advisory Opinion to the Governor, 276 So.2d 25, 28-30 (Fla.1973) (emphasis added) (citation omitted).

Similarly, in *Spector v. Glisson*, 305 So.2d 777 (Fla.1974), we restated the objective that underlies displacing sole executive prerogative from the judicial appointment process:

The nominating commission process in § 11 of Art. V is really a restraint upon the Governor—not a new process for removing from the people their traditional right to elect their judges as

provided in the basic, preceding § 10 of Art. V. *One of the principal purposes behind the provision for a nominating commission in the appointive process was—not to replace the elective process—but to place the restraint upon the “pork barrel” procedure of purely political appointments without an overriding consideration of qualification and ability.* It was sometimes facetiously said in former years that the best qualification to become a judge was to be a friend of the Governor! The purpose of such nominating commission, then, was to eliminate that kind of selection which some people referred to as “picking a judge merely because he was a friend or political supporter of the Governor” thereby providing this desirable restraint upon such appointment and assuring a “merit selection” of judicial officers.

Id. at 783 (emphasis added).

III. Discussion

[1-4] “The interpretation of the Florida Constitution is a question of law” for the Court. *Jackson-Shaw Co. v. Jacksonville Aviation Authority*, 8 So.3d 1076, 1084-85 (2008). In interpreting the constitution, our analysis is straightforward. We begin with an examination of the explicit language of article V, section 11(c). “If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.” *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So.2d 503, 511 (Fla.2008) (quoting *Fla. Soc’y of Ophthalmology v. Fla. Optometric Ass’n*, 489 So.2d 1118, 1119 (Fla.1986)). “Our goal in construing a constitutional provision is to ascertain and effectuate the intent of the framers and voters.” *Id.* at 510. As we have previously explained:

The fundamental object to be sought in construing a constitutional provision

is to ascertain the intent of the framers and the provision must be construed or interpreted in such manner as to fulfill the intent of the people, never to defeat it. Such a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied.

Ford v. Browning, 992 So.2d 132, 136 (quoting *Crist v. Fla. Ass'n of Crim. Defense Lawyers*, 978 So.2d 134, 140 (Fla. 2008)). We remain mindful that in construing a constitutional provision, we are not at liberty to add words that were not placed there originally or to ignore words that were expressly placed there at the time of adoption of the provision. See *Lawnwood*, 990 So.2d at 512.

[5, 6] With these principles in mind, we turn to the language of article V, section 11(c), of the Florida Constitution:

(c) The nominations [for judicial office] shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

Art. V, § 11(c), Fla. Const. (emphasis added). The plain language of article V, section 11(c), mandates that the Governor, upon receipt of the certified list of nominees from a judicial nominating commission, make an appointment from that list within sixty days to fill the judicial vacancy. Significantly, in addition to the mandatory language that is expressly stated in the provision, we note the absence of any language granting the Governor authority to reject the JNC's certified list of nominees or to extend the time in which the appointment for judicial office must be made. Cases such as *In re Advisory Opinion to the Governor* and *Spector pro-*

vide ample historical support for this interpretation.

[7] Petitioner Pleus has sought mandamus relief in this Court. To be entitled to mandamus relief, "the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available." *Huffman v. State*, 813 So.2d 10, 11 (Fla.2000). Based upon our foregoing analysis, we hold that article V, section 11(c), imposes a clear and indisputable legal duty upon the Governor in his exercise of appointing judicial nominees to act within sixty days of receiving the certified list of nominees. Petitioner, as a citizen and taxpayer, has a clear legal right to request that the Governor carry out that duty. See *Chiles v. Phelps*, 714 So.2d 453, 456 (Fla.1998). In so holding, we reject the proposition that the Governor's failure to act within the mandated time frame obviates that duty. To hold otherwise would render the constitutional provision nugatory.

We also reject the argument that mandamus does not lie because the appointment process is an executive function that is inherently discretionary. By allowing this mandamus proceeding, we do not direct the Governor's discretionary decision as to the actual appointment to fill the judicial vacancy. Rather, we simply recognize and enforce the mandate contained in article V, section 11, which requires the Governor to adhere to his duty to make an appointment within the mandated time frame from the certified list of nominees. We recognize that, in fulfilling this constitutional duty, the Governor has discretion in his selection of a nominee from the list.

[8] Finally, we reject the argument that an action for declaratory judgment in the circuit court is an adequate legal reme-

dy under the facts and circumstances of this case, thus requiring denial of mandamus in this Court. As the Court stated in *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d at 462, “[v]acancies in [judicial] office are to be avoided whenever possible. We are confident that the framers of article V intended that the nominating and appointment process would be conducted in such a way as to avoid or at least minimize the time that vacancies exist.” In this case, the passage of almost six months since the petitioner’s resignation became effective warrants our decision, now, in this mandamus proceeding in order to effectuate the intent of the framers to avoid or minimize further delay in filling this judicial vacancy. Moreover, while we applaud the Governor’s interest in achieving diversity in the judiciary—an interest we believe to be genuine and well-intentioned—the constitution does not grant the Governor the discretion to refuse or postpone making an appointment to fill the vacancy on the Fifth District Court of Appeal.⁵

CONCLUSION

We conclude that the Governor is bound by the Florida Constitution to appoint a nominee from the JNC’s certified list, within sixty days of that certification. There is no exception to that mandate. Therefore, we hold that under the undisputed facts and specific circumstances present in this case, the Governor lacks authority under the constitution to seek a new list of nominees from the JNC and has a mandatory duty to fill the vacancy created by Petitioner’s retirement with an

5. It should be noted that the Legislature has also addressed the interest of diversity in the judicial nominating process in section 43.291(4), Florida Statutes (2008). That section provides that the Governor, in appointing members of each judicial nominating commission, “shall seek to ensure that, to the

appointment from the list certified to him on November 6, 2008. Because we believe the Governor will fully comply with the dictates of this opinion, we grant the petition but withhold issuance of the writ.

It is so ordered.

QUINCE, C.J., and PARIENTE,
LEWIS, CANADY, POLSTON, and
PERRY, JJ., concur.



Ricardo I. GILL, Appellant,

v.

STATE of Florida, Appellee.

No. SC06-1572.

Supreme Court of Florida.

July 9, 2009.

Background: Defendant pleaded guilty in the Circuit Court, Union County, Robert P. Cates, J., to first-degree murder, waived penalty phase jury and presentation of mitigation, sought death penalty, and was sentenced to death. Defendant appealed.

Holdings: The Supreme Court held that:

- (1) evidence supported finding that defendant, who had history of mental illness, was competent to enter a knowing, intelligent and voluntary guilty plea;
- (2) plea colloquy was sufficient;

extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered.” § 43.291(4), Fla. Stat. (2008).

§ 11(d), Fla. Const. Although the legislature and the supreme court have the power to repeal such procedures, they have no power to enact procedures requiring record retention beyond that already imposed by the JNC rules of procedure. See Fla. Dist. Ct. Jud. Nominating Comm'n R., § X. In the same vein, a court cannot, as requested by the Coalition, amend the JNC rules to require that the JNC keep a record retention schedule, "privilege log," or accounting of all documents not retained.

In determining that the JNC was not subject to chapter 119, the trial court relied on *Kanner v. Frumkes*, 353 So.2d 196 (Fla. 3d DCA 1977), and *In Re Advisory Opinion to the Governor*, 276 So.2d 25 (Fla.1973). In *Kanner v. Frumkes*, the court addressed an analogous question of law: Whether Florida's Government in the Sunshine Law, chapter 286, applied to a judicial nominating commission. There the court reasoned that the judicial nominating commission's function and authority could not be limited by legislative act. In finding that the JNC was not subject to the Sunshine Law, the court explained:

The function of the judicial nominating commissions being executive in nature and the mandate therefor coming from the Florida Constitution [article V, section 11], not from the legislature, the governor or the judiciary, it is clear that these commissions are not subject to Section 286.011, Florida Statutes (1975).

Id. at 197. In *In Re Advisory Opinion to the Governor*, the supreme court held that judicial nominating commissions could not be limited by legislative act, and the court

advised that the Governor had no power to establish rules governing the operation of the commissions. *In Re Advisory Opinion to the Governor*, 276 So.2d at 25. The 1984 revision to article V, section 11 removed the total discretion of the governor's office by providing discretion to the commissions to promulgate rules of procedure for their hearings and findings, independent of any of the three standard recognized divisions of state government. *Id.* at 30; see also *Op. Atty. Gen. No. 77-65*, 1977 WL 26578, 2 (Fla.A.G.1977) (finding Constitutional Revision Committee not subject to Administrative Procedures Act: "To permit one branch of government to impose rules of procedure upon another coordinate constitutional branch or entity would destroy the constitutional independence of such branch or entity.").

Based on *Kanner* and *In Re Advisory Opinion to the Governor*, the trial court was correct in finding as a matter of law that chapter 119 is inapplicable to the JNC. The Coalition argues that these cases are no longer valid because they were decided prior to the enactment of the constitutional provisions addressed above and before the decision in *Locke*. However, these cases continue to be cited favorably by the supreme court for issues relating to public access to government and separation of powers. See *Florida Senate v. Florida Public Employees Council 79*, *AFSCME*, 784 So.2d 404, 408 (Fla.2001); *In re Advisory Opinion to the Governor*, 600 So.2d 460 (Fla.1992); see also *Kansas Attorney General's Opinion No. 94*, 1982 WL 187743 (December 3, 1982).² Thus,

2. The Kansas opinion addressed the same issue as the one raised in *Kanner* and in the instant case. Citing *In re Advisory Opinion* and *Kanner*, it stated:

Although Supreme Court cases of our sister states have no precedential effect in Kansas, we do find the conclusion of the Florida

courts to be uniquely persuasive [T]he Florida sunshine law is commonly known to be one of the most comprehensive of open meetings laws in the nation and the Florida courts are renowned for their liberal interpretations favoring public access. Even in such context, the state legislature

our analysis concerning the commission's duty to make disclosure must focus on the Florida Constitution and not chapter 119, Florida Statutes.

[7-10] Article V, section 11 specifically exempts deliberations from public disclosure. As an initial matter, we must ascertain how broadly to construe the term "deliberations." In construing a constitutional provision, the starting point must be the language employed in the provision. See *American Tobacco Co. v. Patterson*, 456 U.S. 63, 102 S.Ct. 1534, 71 L.Ed.2d 748 (1982). The words should be given reasonable meaning according to the subject matter and in the framework of modern societal usage and grammatical structure. *State, Comm'n on Ethics v. Sullivan*, 449 So.2d 315, 316 (Fla. 1st DCA 1984). This court must use common sense in construing the true intent of the provision. *Id.* The intention can be ascertained by determining the "evil sought to be prevented or remedied" in initiating enactment of the constitutional provision. *Id.*

The Coalition argues that deliberations are only oral, and therefore, deliberations cannot include documents such as the ones sought by its request. The word "deliberation" has not been defined by the legislature, nor has it been interpreted by Florida Courts. *Black's Law Dictionary*, however, defines "deliberation" as follows:

The act of carefully considering issues and options before making a decision or taking some action . . . as by analyzing, discussing, and weighing evidence.

was found to lack authority to mandate public meetings. . . . [Similarly] the [Kansas] Constitution does not appear to authorize the legislature to impose such requirements on the internal operations of this constitutionally created body.
Id. at 2 (emphasis added).

Black's Law Dictionary 438-439 (7th ed.1999). We reject the Coalition's assertion that deliberations are only oral.

The question of what constitutes a deliberation has been addressed in other jurisdictions. In *Titus v. Shelby Charter Township*, 226 Mich.App. 611, 574 N.W.2d 391 (1997), a Michigan court addressed an issue similar to the one presented here: Whether a transcript of a proceeding fell under the deliberation exemption of that state's Freedom of Information Act (FOIA). There, the township board of trustees held a closed session regarding the termination of a police officer. The Michigan FOIA exempted minutes of deliberations with respect to such subjects. The Michigan court concluded that the transcript of the session was exempt:

In this case . . . the dialogue between board members during the session may be said to be *part of the process of deliberating* whether to terminate plaintiff's employment. . . . As such, the transcript is exempt from disclosure.

Id. at 393 (emphasis added). Cf. *Springfield Local School District Board of Education v. Ohio Association of Public School Employees*, 106 Ohio App.3d 855, 667 N.E.2d 458 (1995) (citing a dictionary definition; concluding that deliberation was a process).³

The JNC procedural rules are consistent with the interpretation of deliberation as a process occurring through proceedings:

All applications, and other information received from or concerning applicants, and all interviews and proceedings of

3. The Ohio court defined "deliberation" as "the act of weighing and examining the reasons for and against a choice or measure" or "a discussion and consideration by a number of persons of the reasons for and against a measure." *Id.* (citing *Merriam-Webster's New International Unabridged Dictionary* 596 (3d ed.)).

the commission, except for deliberations by the commission, shall be open to the public.

Fla. Dist. Ct. Jud. Nominating Comm'n R., § IV. This broad interpretation of "deliberation" is also consistent with the use of the word in other provisions of the Florida Statutes which contemplate that deliberations take place during proceedings and involve the use of documents or notes.⁴

The 1984 amendment to article V, section 11(d) was intended to provide public access to the JNC's workings (which historically were exempt from the Government in the Sunshine Law). At the same time, it is clear from the legislative staff analyses that the amendment was intended to exempt access to deliberation proceedings and deliberation records. The Senate Staff Analysis and Impact Statement explains the effect of the addition of the last sentence in article V, section 11(d):

The 26 judicial nominating commissions are viewed as independent constitutional bodies and each is therefore permitted to have its own rule and procedures . . . [T]heir deliberations may be closed to the public and the press.

....

The bill proposes an amendment to Article V, Section 11(d) . . . for public access to all judicial nominating commission

proceedings and records *other than deliberations*.

Fla. H.R. Comm. on Judiciary, HJR 1160 (final April 25, 1984)(on file with State Archives; emphasis added); *accord* Fla. S. Comm. on Judiciary C.S. for SB 94 (final April 25, 1984)(on file with State Archives).⁵

At trial, each party argued the public policy reasons for restricting access to those records and discussions pertaining to deliberations. The commentary following article V, section 11 in Florida Statutes Annotated succinctly summarizes the arguments for and against public access to JNC deliberations:

Attempts to open the deliberation portion of the process to the public have been met with resistance from many who believe it would be a chilling effect on the commission members' candor in discussing judicial candidates. Supporters of removing the confidentiality requirements have argued that the deliberations of the judicial nominating commissions should be open to the public to avoid the use of hearsay and rumors and to assure that the selection process is free of personal bias.

26 Fla. Stat. Ann. 32 (Supp.2002). Because the 1984 amendment to article V intentionally and purposely created an ex-

4. See, e.g., § 40.50, Fla. Stat. (allowing jurors to take confidential notes during civil actions likely to exceed 5 days for later use during deliberations); § 380.05, Fla. Stat. (describing specific factors and data to be considered by Legislature during its deliberations regarding state land planning); § 447.205, Fla. Stat. ("The deliberations of the [public employees relations] commission in any proceeding before it are closed and exempt from the provisions of [Sunshine Law]"); § 489.107, Fla. Stat. (allowing qualified members to join in deliberations during disciplinary proceedings); § 905.24, Fla. Stat. ("Grand jury proceedings are secret, and a grand juror or an interpreter appointed pursuant to

§ 90.6063(2) shall not disclose the nature or substance of the deliberations").

5. The legislative staff summaries and analyses were not part of the record, nor were they cited by the parties. However, they aid this court in interpreting the constitutional provisions at issue. See generally *Ellsworth v. Insurance Co. of North America*, 508 So.2d 395, 401 (Fla. 1st DCA 1987) (noting, although court's decision was not predicated on Legislative Staff Summary and Analysis, this particular type of extrinsic aid to statutory interpretation is accorded significant respect by Florida courts).

emption for deliberations, the public policy debate was ultimately won by those who opposed opening deliberations to the public.

It defies common sense to keep deliberations closed, but allow the disclosure of records made for or used during deliberations. To do so would circumvent the confidential nature of deliberations as specifically exempted by the Constitution. As such, the trial court was correct in interpreting this constitutional provision as exempting all records which "constitute an integral part of the deliberations of the commission." Therefore, all records pertaining to voting, including vote sheets, ballots, and ballot tally sheets are clearly part of the deliberation process.

[11] Individual member's notes are not public record.⁶ The supreme court has elaborated on what does and does not constitute a public record in *Shevin v. Byron, Harless, Schaffer, Reid & Assocs.*, 379 So.2d 633 (Fla.1980). As here, the plaintiffs in *Byron, Harless* specifically sought documents related to potential applicants for a public position. The court interpreted "public record" as any material prepared in connection with official agency business that is intended to perpetuate, communicate, or formalize knowledge of some type. *Id.* at 640. The court specifically noted that materials prepared as

drafts or notes which constitute mere precursors of governmental records, are not in themselves intended as final evidence of the knowledge to be recorded. *Id.* The court concluded that handwritten notes made during or shortly after interviews with job prospects did not constitute public records.

Florida courts have consistently held that under chapter 119 public employees' notes to themselves which are designed for their own personal use in remembering certain things do not fall within the definition of "public record." *Lopez v. State*, 696 So.2d 725 (Fla.1997).⁷ This court addressed the issue of handwritten notes in *Coleman v. Austin*, 521 So.2d 247 (Fla. 1st DCA 1988). There the plaintiff made a request pursuant to chapter 119 for documents relating to his prosecution, and the trial court entered an order ruling that "handwritten notes and memoranda . . . are not public records and need not be disclosed. . . ." *Id.* at 248. Although this court held that the order erroneously excluded from disclosure memoranda which formalized knowledge and communicated information between public employees, we noted that "the contested documents involved in the present case include preliminary notes which are not public records under the standard announced in *Byron, Harless*."⁸ *Id.* at 249. Here, unlike *Cole-*

6. We would note that strong arguments may be made that the individual members' notes are also an integral part of the deliberation process and that required disclosure would only force members to rely on their memories. It is unnecessary for us to reach this issue as we determine that the individual members' notes are not encompassed within the disclosure requirement.

7. *Accord Johnson v. Butterworth*, 713 So.2d 985 (1998) (finding state attorney's outline of evidence, a proposed outline for trial, handwritten notes were not public records); *Bryan v. Butterworth*, 692 So.2d 878 (1997) (finding legal pads regarding Attorney General's im-

pressions and strategy, sheets summarizing psychological reports prepared by paralegal for later use by AG, and annotated map prepared by AG were not "public records").

8. Few courts have considered the issue of whether personal notes of officials are public records, but the majority have adopted a similar position. See, e.g., *Courier-Journal v. Jones*, 895 S.W.2d 6 (Ky.App.1995) (holding Governor's daily appointment schedule with notes were not subject to state FOIA); *In State, ex rel. Mothers Against Drunk Drivers, v. Gosser*, 20 Ohio St.3d 30, 485 N.E.2d 706, 710 (1985) (finding judge's personal notes regarding trial and sentencing hearing were not

man, the Coalition has not made any request for memoranda between commissioners, but rather repeatedly requested "members' notes."

[12, 13] Similarly, in *Times Publishing Company, Inc. v. City of St. Petersburg*, 558 So.2d 487 (Fla. 2d DCA 1990), the court affirmed the trial court's finding that requested personal notes regarding negotiations between the city and a baseball team were not public records pursuant to the public records law. There, after reviewing the trial testimony, the depositions, arguments of counsel, and an *in camera* review of the notes of the City's participants the trial court found that "[t]hese notes served no governmental function," but "were merely the personal tools of recollection of the writer." *Id.* at 491-492.⁹

The JNC rules of procedure are consistent with the court's findings in *Byron, Harless* and *Times Publishing*. The rules delineate which documents shall be made available:

Each commission shall maintain continuous records of its proceedings. In order

public records); *American Fedn. of Govt. Emp., Local 2782 v. United States Dept. of Commerce*, 632 F.Supp. 1272 (D.D.C.1986), *aff'd* 907 F.2d 203 (D.C.Cir.1990) (holding employees' personal notes not intended for distribution through usual agency channels are beyond the scope of the federal FOIA). *But cf. Tingling v. Lang*, 39 Misc.2d 338, 240 N.Y.S.2d 633 (1963) (allowing inspection of written notes and computations made in course of audit proceedings under state FOIA where court found notes formed a part of the file and inquiry and could have been used for guidance in final audit report).

9. Martinez agreed to seal and retain the withheld documents until the courts determined whether those documents constitute public records. These documents are not part of the record, nor did the trial court review these sealed documents *in camera*. The Coalition had the burden of requesting an *in camera*

that such records may be safeguarded, the commission after completing its deliberations and submitting its recommendations to the governor, shall place all remaining applications, questionnaires and other investigative data in a file, sealed by the chair, and transmit the same to the office of The Florida Bar. The files will be available on a continuous basis to the commission upon request, but the files may be destroyed on a yearly basis.

Fla. Dist. Ct. Jud. Nominating Comm'n R., § X.¹⁰ The rules do not require votes, notes, ballots, or tally sheets be made available.

In conclusion, we hold that the vote sheets, ballot tally sheets, and ballots are exempt under article V, section 11(d) of the Florida Constitution because they are part of the deliberation process. Notes of the individual commission members are not subject to public disclosure because they are not public record. Finally, in light of our discussion concerning the applicability of chapter 119, we also determine that the trial court correctly ruled

inspection and failed to do so. *See generally Times Publishing Company v. City of Clearwater*, 27 Fla. L. Weekly D1073, n. 2, 2002 WL 944630 (Fla. 2d DCA May 10, 2002). Under the facts alleged in the Coalition's complaint, we fail to see the need for an *in camera* inspection because we hold that the members' notes never reached the status of public records and the remaining requested items are excluded under the deliberation process exception of article V, section 11(d) of the Florida Constitution.

10. *See also* S.Ct. Jud. Nominating Comm'n R., § I ("The Commission may seek and shall receive information from interested persons and groups. All applications, and other written information received from or concerning applicants, and all interviews and proceedings of the Commission, except for deliberations by the Commission, shall be open to the public to the extent required by law.").

that the commission was not required to maintain a record retention schedule.

The decision of the trial court is affirmed.

MINER and DAVIS, JJ., concur.



1

CHOICE CAPITAL CORPORATION,
Appellant,

v.

CMC ACCEPTANCE CORPORATION,
Appellee.

No. 5D01-1992.

District Court of Appeal of Florida,
Fifth District.

July 16, 2002.

Appeal from the Circuit Court for Marion County, Carven D. Angel, Judge.

Jack R. Maro, Ocala, for appellant.

Bryce W. Ackerman of Hart & Gray, Ocala, for appellee.

PER CURIAM.

AFFIRMED. See § 48.193(1)(a), (b), (f)1. & (g), Fla.Stat. (2000); *Wendt v. Horowitz*, 822 So.2d 1252 (Fla.2002); *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla.1989).

COBB, HARRIS and ORFINGER, R.B., JJ., concur.



2

Kevin R. MACK, Appellant,

v.

STATE of Florida, Appellee.

No. 5D02-1807.

District Court of Appeal of Florida,
Fifth District.

July 16, 2002.

Rehearing Denied Aug. 16, 2002.

3.850 Appeal from the Circuit Court for Brevard County, Vincent G. Torpy, Jr., Judge.

Kevin R. Mack, Sneads, Pro Se.

No Appearance for Appellee.

PER CURIAM.

AFFIRMED. See *Asay v. State*, 769 So.2d 974 (Fla.2000).

PETERSON, GRIFFIN and ORFINGER, R. B., JJ., concur.



3

Tommy WILLIAMS, Appellant,

v.

STATE of Florida, Appellee.

No. 4D02-846.

District Court of Appeal of Florida,
Fourth District.

July 17, 2002.

Rehearing Denied Aug. 20, 2002.

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seven-

arguably comparable to factfinding necessary to expand the sentencing range available on conviction of a lesser crime than murder. Even if we were satisfied that the analogy was sound, *Hildwin* could not drive the answer to the Sixth Amendment question raised by the Government's position here. In *Hildwin*, a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved. *Hildwin*, therefore, can hardly be read as resolving the issue discussed here, as the reasoning in *Walton v. Arizona*, 497 U.S. 639, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990), confirms.

There is simply no reason for this Court to stay this execution in order to study or further consider *Ring*. These cases of the Supreme Court of the United States, dealing directly with the Florida capital sentencing statute—not *Ring*, which deals with the Arizona capital sentencing statute³—continue to be what this Court and lower Florida courts are to follow.

I am very concerned about the confusion which will certainly result for Florida's trial judges from this Court's stay of execution. These trial judges have to try cases and adjudicate postconviction motions this week.⁴ This Court's entering of this stay of execution will clearly leave the impression that *Ring* has an effect at present on Florida's capital sentencing statute. Because the Supreme Court has repeatedly upheld Florida's statute and because

3. In footnote 6 of the *Ring* decision, the Supreme Court expressly stated that Florida's capital sentencing statute was different from Arizona's capital sentencing statute. See *Ring*, at 2442 n. 6.

4. Indeed, on Friday, July 5, 2002, a defendant convicted of first-degree murder but not yet

Ring did not overrule any of these decisions, that impression is clearly incorrect. There are twenty-five years of precedent from the Supreme Court repeatedly upholding the constitutionality of Florida's capital sentencing statute, and nothing in *Ring* affected those decisions.



ADVISORY OPINION TO the GOVERNOR re: APPOINTMENT OR ELECTION OF JUDGES.

No. SC02-1213.

Supreme Court of Florida.

July 10, 2002.

Governor requested advisory opinion on filling vacancy after involuntary retirement of circuit court judge and qualification of candidates for election. The Supreme Court held that, upon the qualification of a candidate or candidates for a circuit or county judgeship during the statutory qualification period, the election method of selection takes precedence over and forecloses the Governor's constitutional authority and obligation to fill a vacancy that occurs during the balance of the incumbent judge's term of office.

Question answered.

sentenced filed in this Court petitions for the extraordinary writs of prohibition and mandamus, citing *Ring* in seeking to stay the remainder of the penalty phase proceedings and to require the trial court to impose a life sentence. See *Coday v. State*, SC02-1456, petition at 7 (Fla. petition filed July 5, 2002).

Anstead, C.J., and Shaw, J., concurred in the result only.

Lewis, J., dissented and stated opinion.

Judges ⇐3

Upon the qualification of a candidate or candidates for a circuit or county judgeship during the statutory qualification period, the election method of selection takes precedence over and forecloses the Governor's constitutional authority and obligation to fill a vacancy that occurs during the balance of the incumbent judge's term of office; once the election process begins by candidates qualifying for the judge position, the election method is the method by which the judicial position is to be filled. West's F.S.A. Const. Art. 5, §§ 10(b)(1, 2), 11(b); West's F.S.A. § 105.051(1).

The Honorable Jeb Bush, Governor, State of Florida, Tallahassee, FL, Petitioner.

Steven L. Brannock of Holland & Knight LLP; and Karol K. Williams of Karol K. Williams, P.A., Tampa, FL, for Interested Party, Martha J. Cook, Candidate for Circuit Court Judge Group 30/13th Judicial Circuit.

Carlos A. Pazos, pro se, of the Law Offices of Carlos A. Pazos, P.A., Tampa, FL, for Interested Party, as a Candidate for Circuit Court Judge Group 30/13th Judicial Circuit.

Kenneth C. Whalen, pro se, Tampa, FL, for Interested Party, as a Candidate for Circuit Court Judge Group 30/13th Judicial Circuit.

1. Briefs were filed by Martha J. Cook, Carlos A. Pazos, and Kenneth C. Whalen, the three putative candidates who previously qualified

The Honorable Jeb Bush
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Governor Bush:

We have the honor of responding to your request for our opinion as to the interpretation of a constitutional provision affecting your executive powers and duties. Your request was made, and our opinion is provided as authorized by article IV, section 1(c) of the Florida Constitution. Upon receipt of your letter, we issued an order permitting interested parties to file briefs in order to be heard on an expedited basis on the question you presented.¹ The pertinent parts of your letter read as follows:

Pursuant to Article IV, Section 1(c), Florida Constitution, I hereby request your opinion on a question involving the interpretation of my executive powers and duties under Article V, Section 11(b), Florida Constitution.

The basis for this request is set forth below:

1. On May 30, 2002, this Court entered an order declaring Judge Florence Foster of the Thirteenth Judicial Circuit involuntarily retired effective as of midnight May 30, 2002, due to a physical disability which seriously interferes with the performance of her judicial duties. [See *Inquiry Concerning a Judge, No. 02-176 Re: Florence Foster*, SC02-1110 (Fla. order filed May 30, 2002).]

2. Judge Foster was serving a term of office which would have ended on January 7, 2003, had her service not been terminated by involuntary retire-

to succeed Thirteenth Judicial Circuit Court Judge Florence Foster.

ment. The judgeship held by Judge Foster was designated as Group 30 of the Thirteenth Judicial Circuit.

3. During the period May 13 through May 16, 2002, three persons qualified with the Division of Elections of the Department of State as candidates for election to the judgeship designated as Group 30 of the Thirteenth Judicial Circuit. The persons qualifying as candidates were: Martha Cook, Carlos A. Pazos and Ken Whalen.

4. A question has arisen whether the vacancy created by the involuntary retirement of Judge Foster should be filled by appointment pursuant to the provisions of Article V, Section 11(b), Florida Constitution.

5. Article V, Section 11(b) provides: The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointment term.

6. Under these constitutional provisions, if an appointment is made to fill the vacancy created by the involuntary retirement of Judge Foster, the person appointed will serve a term ending on the first Tuesday after the first Monday

in January, 2005, and no election to fill the position will be conducted this year.

7. If no appointment is made, and an election to fill the position is conducted this year, the judicial office left vacant by Judge Foster's involuntary retirement will not be filled until January, 2003.

8. If an appointment is made, the judicial office left vacant by Judge Foster's involuntary retirement will most likely be filled by September, 2002.

9. In *Pincket v. Harris*, 765 So.2d 284 (Fla. 1st DCA 2000), the Court held that the vacancy created by the resignation of a circuit judge effective June 20, 2000, from a judgeship for which an election was scheduled that year should nonetheless be filled by appointment. In *Pincket*, the statutory qualifying period was scheduled for a period after the vacancy had occurred.

In light of the foregoing circumstances, I respectfully request the opinion of the Justices of the Supreme Court on the following question:

Should an appointment be made pursuant to Article V, Section 11(b), Florida Constitution, to fill a judicial vacancy which occurs after candidates have qualified for election to the judgeship which has become vacant?

Letter from Governor Bush to Chief Justice Wells of May 31, 2002, at 1-3.²

ANALYSIS

The issue in this case concerns the proper method of selecting circuit and county judges in the situation where a vacancy occurs in a circuit or county judge position during an election period. The conflicting directives are contained in article V, section 10(b)(1), (2), and (3)c.³ Flori-

2. After receipt of the Governor's letter but prior to the release of our opinion, Justice Anstead succeeded Justice Wells as Chief Justice.

3. The last sentence of section 10(b)(3)c. provides: "The terms of circuit judges and judges of county courts shall be for six years."

da Constitution, relating to the election and retention of circuit and county judges, and section 11(b),⁴ Florida Constitution, relating to the filling of vacancies occurring in the circuit and county courts. The precise issue we address is whether your constitutional authority and obligation to fill a vacancy pursuant to section 11(b) continues after the election process begins for the specific election of a circuit or county judge for the term which will begin in January after the impending election. We find that the election process for the election of circuit and county judges mandated by section 10(b)(1) and (2) and implemented by section 105.051(1), Florida Statutes (2001), begins when a candidate or candidates have qualified for the circuit or county judgeship. See ch.2002-17, § 23, Laws of Fla.

The constitutional sections do not provide an express answer to this question but rather do appear to be in conflict in respect to the election section and the vacancy section. The election section expressly states that “the election of circuit judges shall be preserved. . . .” Art. V, § 10(b)(1), Fla. Const. Article V, section 10(b)(3) required a referendum in the year 2000 to be placed before the voters in each of Florida’s twenty judicial circuits and sixty-seven counties concerning the method of selection of circuit and county judge-

ships. See generally *Kainen v. Harris*, 769 So.2d 1029 (Fla.2000). A majority of the voters within the territorial jurisdiction of each judicial circuit court and county court voted to retain the election of those judges instead of replacing the elective system with a merit-selection system for those courts.⁵ An elected circuit or county judge has a six-year term of office. See art. V, § 10(b)(3)c., Fla. Const. In contrast, the vacancy section provides that the “governor shall fill each vacancy on a circuit court or on a county court.” Art. V, § 11(b), Fla. Const. The term of a judge so appointed is not for six years, as with elected judges, but rather a limited term which concludes “on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of the appointment.” *Id.*

In the situation presented by your letter, there are three candidates who qualified during the statutory qualifying period for election to the circuit judge position which at that time was held by Judge Foster.⁶ The circuit judge position in consideration here became vacant on May 31, 2002, by our approval of the uncontested involuntary retirement of the incumbent circuit judge, who had not qualified for reelection. See *Inquiry Concerning a*

4. Article V, section 11(b) provides:

The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

5. According to the Secretary of State’s records regarding this constitutionally mandated referendum vote in the year 2000, in the Thirteenth Judicial Circuit, 100,649 persons voted for the merit-selection system and 225,140 persons voted for the elective system.

6. The Legislature in the most recent session changed the qualifying period for judicial office, which historically had occurred during mid-July. See ch.2002-17, § 23, Laws of Fla. The period of qualifying in the instant case was from noon on May 13, 2002 until noon on May 17, 2002.

Judge, No. 02-176 Re: Florence Foster, SC02-1110 (Fla. order filed May 30, 2002). You advised that in accord with judicial nominating commission procedures, an appointment to fill the vacancy occurring on May 31 would likely be able to be made in September. It is, of course, possible that by the time you are able to make an appointment that one of the candidates will have received a majority of votes in the judicial election scheduled to be held on September 10, 2002.⁷ If you made an appointment at that time, the election would be a nullity. Moreover, the person appointed, even if it was the person who was selected by majority vote, would then only be entitled to a term ending in January 2005, as opposed to a six-year term ending in January 2009 that an elected circuit judge would have.⁸

In view of this conflict between sections of the constitution, we conclude that the conflict must be resolved by a construction which gives effect to the clear will of the voters that circuit and county judges be selected by election. We therefore answer your question by stating that it is our opinion that upon the qualification of a candidate or candidates for a circuit or county judgeship during the statutory qualification period, the election method of selection required by section 10(b)(1) and

(2) takes precedence over and forecloses the Governor's constitutional authority and obligation pursuant to section 11(b) to fill a vacancy that occurs during the balance of the incumbent judge's term of office.⁹ Once the election process begins by candidates qualifying for the judge position, the election method is the method by which the judicial position is to be filled. Our opinion, however, is limited to the circumstances described in your letter, i.e., where a candidate or candidates have already qualified during the statutory qualifications period, one of whom will fill the position by election.

We understand and are aware that the length of the vacancy in this case will work a hardship on the workload in the Thirteenth Judicial Circuit because the judgeship vacated by Judge Foster will not be filled until January 2003. We are also aware of the policy concerns previously raised by our discussion of the need to avoid extended judicial vacancies. *See, e.g., In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla.1992). In light of this hardship, the Chief Justice of this Court will endeavor to cover this deficiency with the use of senior judges when requested to do so by

7. *See* ch.2001-40, § 46, at 155, Laws of Fla.; § 105.051(1), Fla. Stat. (2001). If no candidate receives a majority of the votes cast on September 10, 2002, the two candidates who receive the most votes are to be on the ballot in November. *See* § 105.051(1), Fla. Stat. (2001).

8. There are other scenarios in which an election would be a nullity if your constitutional authority and obligation to fill vacancies by appointment continued after candidates have qualified for circuit or county court positions. One such instance is where an incumbent judge runs for reelection but the incumbent judge's opponent wins the election, and then the incumbent judge resigns, dies, or is removed from office prior the commencement

of the elected term of office. If the governor had the authority and obligation to fill that vacancy by appointment the election would be a nullity.

9. We have considered the case from the First District Court of Appeal to which you referred in your letter. *See Pincket v. Harris*, 765 So.2d 284 (Fla. 1st DCA 2000). We find the facts of that case to be distinguishable from the facts set forth in your letter on the basis that in *Pincket* no person had qualified for the election at the time the vacancy occurred because the qualification period had not yet occurred. *See id.* at 285; § 105.031(1), Fla. Stat. (2000).

the Chief Judge of the Thirteenth Judicial Circuit. *See* art. V, § 2(b), Fla. Const.

Chief Justice Anstead and Justice Shaw concur only in the result reached by the majority. Justice Lewis does not join in the opinion of the majority. Rather, it is the opinion of Justice Lewis that the majority rewrites the Florida Constitution. Justice Lewis finds nothing in the Florida Constitution that limits the appointment powers with reference to the phrase coined by the majority as when “the election process begins.”

Respectfully,

/s/ Harry Lee Anstead
HARRY LEE ANSTEAD

/s/ Leander J. Shaw
LEANDER J. SHAW

/s/ Major B. Harding
MAJOR B. HARDING

/s/ Charles T. Wells
CHARLES T. WELLS

/s/ Barbara J. Pariente
BARBARA J. PARIENTE

/s/ R. Fred Lewis
R. FRED LEWIS

/s/ Peggy A. Quince
PEGGY A. QUINCE



Kelly TORMEY, Petitioner,

v.

Michael W. MOORE, et
al., Respondents.

No. SC97143.

Supreme Court of Florida.

July 11, 2002.

After conviction for armed robbery and second-degree murder, defendant peti-

tioned for mandamus review. The Supreme Court held that: (1) the portion of law enhancing punishment for all murderers was unconstitutional under single-subject rule, and (2) defendant was entitled to provisional sentencing credits.

Writ granted.

Anstead, C.J., concurred in result only.

1. Statutes ⇨105(1)

The purpose for the constitutional prohibition against a plurality of subjects in a single legislative act, pursuant to single-subject rule, is to prevent a single enactment from becoming a “cloak” for dissimilar legislation having no necessary or appropriate connection with the subject matter. West’s F.S.A. Const. Art. 3, § 6.

2. Statutes ⇨105(1)

The purpose of the title requirement in the single-subject rule is to put people who may be subject to a law, other lawmakers, and other interested persons on notice of the nature and substance of the law and, at a minimum, inform them of the need to further inquire into the specifics of the legislation. West’s F.S.A. Const. Art. 3, § 6.

3. Sentencing and Punishment ⇨1005

Statutes ⇨107(3)

That portion of Law Enforcement Protection Act that barred award of provisional sentencing credits to all murderers was invalid under constitutional single-subject rule; title of act indicated that it provided for increased criminal penalties for persons who committed criminal offenses against law enforcement personnel only. West’s F.S.A. Const. Art. 3, § 6; F.S.1993, § 944.277(1)(i).

(v) as otherwise provided by law.

Rule 9.140(b)(2)(B)(i)-(v), Fla. R.App. P.

We agree with the conclusion reached in *Green v. State*, 700 So.2d 384 (Fla. 1st DCA 1997), that if the court imposes a sentence in excess of the plea bargain, his claim will be cognizable on appeal only if he filed a motion to withdraw his plea to preserve his claim.¹ Appellant failed to preserve this point for appeal because he failed to file a motion to withdraw his plea.

Accordingly, we affirm appellant's sentence. However, we do so without prejudice for him to file a motion for post-conviction relief pursuant to rule 3.850, Florida Rules of Criminal Procedure.

AFFIRMED.

GUNTHER and STEVENSON, JJ.,
concur.



Stephen P. PINCKET, Appellant,

v.

**Katherine HARRIS, as Secretary of
State for the State of Florida and Jeb
Bush, as Governor of the State of
Florida, Appellees.**

No. 1D00-2997.

District Court of Appeal of Florida,
First District.

Aug. 18, 2000.

Prospective judicial candidate filed
emergency petition for writ of mandamus

1. In *Green v. State*, 700 So.2d 384 (Fla. 1st DCA 1997), because the rule amendments became effective January 1, 1997, and were not applicable to the defendant who was sentenced on July 19, 1996, the court stated that "if his situation . . . constitutes a sentence in

against Secretary of State, seeking order revoking Secretary's disqualification of prospective candidate. The Circuit Court, Leon County, Terry P. Lewis, J., denied petition. Prospective candidate appealed. The District Court of Appeal, Davis, J., held that State Constitution required that judge's former seat to be filled via gubernatorial appointment rather than the election process.

Affirmed.

Judges ⇄ 3

State Constitution required that judge's former seat be filled via gubernatorial appointment rather than the election process, where filling seat with elected judge meant that office would have remained vacant for six months. West's F.S.A. Const. Art. 5, § 11(b).

Steve Pincket of Steve Pincket, P.A., Lakeland; Stephen R. Senn of Peterson & Myers, P.A., Lakeland; and Richard McKendrick, Lakeland, for Appellant.

Deborah K. Kearney and Emmett Mitchell, IV, Florida Department of State, Tallahassee; and Hayden R. Dempsey, Executive Office of the Governor, Tallahassee, for Appellees.

DAVIS, J.

Appellant, Stephen P. Pincket, appeals the trial court's order denying his emergency petition for writ of mandamus, which sought to have the trial court order Secretary of State Katherine Harris to revoke her disqualification of Pincket as a candidate for a vacant Tenth Judicial Circuit judicial seat. Because we conclude that the trial court correctly interpreted the constitutional provisions as applied to

excess of the plea bargain, his claim is cognizable in this appeal because the amendments to Rules 9.140 and 3.170 requiring him to file a motion to withdraw were not effective at the time he was sentenced." *Id.* at 387.

the particular facts of this case and properly denied relief, we affirm.

Judge Robert A. Young was a circuit judge in the Tenth Judicial Circuit with a term expiring on January 2, 2001. In April 2000, the Secretary of State caused a notice of general election to be published in the *Lakeland Ledger*, announcing the November 2000 elections for various offices, including Judge Young's seat. By letter dated June 19, 2000, Judge Young announced that he intended to resign, effective midnight, June 20. Governor Bush formally accepted the resignation on June 29, and at approximately the same time, the Governor's office forwarded a letter to the judicial nominating commission (JNC) for the Tenth Judicial Circuit, requesting that it convene for the purpose of submitting nominees to fill the vacancy caused by Judge Young's resignation. In turn, the JNC requested the Attorney General's opinion on whether the vacancy should be filled by holding an election or by gubernatorial appointment. On July 6, 2000, the Attorney General issued opinion 00-41, opining that in light of article V, section 11(b) of the Florida Constitution,¹ the vacancy must be filled by appointment, with the term to end in January 2003.

On July 17, Pincket filed qualifying papers for Judge Young's former seat on the Tenth Judicial Circuit bench, group 16, with the Division of Elections. The record indicates that, according to the Secretary of State, the Division of Elections knew at this time that the vacancy was to be filled by appointment, but an employee who was unaware of this fact accepted Pincket's papers and qualified him as a candidate. Realizing its error, the Secretary of State's office informed Pincket the following day

that he had been qualified in error, that there would be no election because the governor had determined to fill the vacancy by appointment, and that his qualifying papers and fee would be returned.

Pincket filed an "emergency petition for writ of mandamus, or for writ of prohibition, or for declaratory and injunctive relief," naming the Secretary of State as the sole respondent. Pincket argued that the Secretary of State had no authority to disqualify him as a candidate once he had been qualified, or that, if such authority exists, no proper grounds for its exercise were present in this situation. Pincket sought to have the trial court order that the Secretary of State revoke her disqualification of him and return his qualification papers and fee and reinstate him as a fully qualified candidate, and that the trial court require that the election be held. Pincket sought, in the alternative, to have the trial court restrain the Governor's office from making an appointment to fill the vacant seat.

The Secretary of State responded that she must be deemed to have the authority to return qualifying papers for an election that will not occur, and that the provisions of article V, section 11(b) called for the vacancy to be filled by appointment rather than by election. Governor Jeb Bush was permitted to intervene and joined in the Secretary of State's memorandum in support of her response. Following a hearing, the trial court issued an order denying Pincket's request for relief and adopting the reasoning expressed in the Attorney General's opinion 00-41, rendered July 6, 2000. The trial court agreed with the Attorney General's opinion that "In light of the language of [a]rticle V, [s]ection 11,

1. Article V, section 11(b) was amended in 1996 to read:

The governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than

three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(emphasis added to indicate 1996 amendment).

[of the] Florida Constitution, the resignation of a circuit court judge under these circumstances creates a vacancy which must be filled by appointment by the Governor for a term of office to end in January 2003.’”

Underlying Pincket's challenge of his disqualification by the Secretary of State is the issue of whether the Florida Constitution requires Judge Young's former seat to be filled via the election process or by gubernatorial appointment. Pincket argues that *Spector v. Glisson*, 305 So.2d 777 (Fla.1974), compels the conclusion that the vacant seat must be filled by election rather than appointment. Although we recognize the broad language used by the *Spector* court, the court in *In re Advisory Opinion to the Governor*, 600 So.2d 460 (Fla.1992), and the 1996 amendment to article V, section 11(b), has limited *Spector* to its facts. In *Spector*, the Secretary of State, relying upon an attorney general opinion, refused to accept the qualifying papers and fees of two prospective candidates for the seat of retiring Florida Supreme Court Justice Richard W. Ervin, because the attorney general had concluded that no vacancy yet existed due to Justice Ervin's resignation not becoming effective until a later date. The *Spector* court examined the meaning of the term "vacancy" in the Florida Constitution and concluded that a vacancy, albeit a future one, was created once Justice Ervin, in a letter dated February 1974, submitted notice of his intent to resign effective midnight, January 26, 1975. See *Spector*, 305 So.2d at 780, 784. Thus determining that a vacancy had occurred by virtue of Justice Ervin's submission of the resignation letter, the supreme court determined that the position should be filled through the election process rather than through the appointment process as set forth in article V, section 11(a) of the Florida Constitution. In support of its determination, the court explained:

[w]e have historically since the earliest days of our statehood resolved as the

public policy of this State that interpretations of the constitution, *absent clear provision otherwise*, should always be resolved in favor of retention in the people of the power and opportunity to select officials of the people's choice, and that vacancies in elective offices should be filled by the people at the earliest practical date.

Id. at 781 (emphasis added). The court stated that based upon this rationale as well as confirmed public policy, "that if the elective process is available, and if it is not expressly precluded by the applicable language, it should be utilized to fill any available office..." *Id.* at 782. The court noted that article V, section 11(a) was newly created to provide for the prompt filling of vacancies when the elective process was unavailable. The court concluded that:

[i]nterim appointments need only be made when there is no earlier, reasonably intervening elective process available. As between the appointive power on the one hand and the power of the people to elect on the other, the policy of the law is to afford the people priority, if reasonably possible... *If such policy is to be modified, let the people speak.*

Id. at 784 (emphasis added).

As explained in *Spector*, the judicial election in September was available subsequent to Justice Ervin's resignation letter of February, and there was no emergency or public business requiring an immediate appointment since the Justice's tenure would continue until January 6. See *id.* Thus, the court found that a vacancy was created and that such vacancy could be properly filled by the elective machinery in 1974.

Pincket argues that the sweeping language in *Spector* mandates that the vacant seat here must be filled by election. For example, the *Spector* court interpreted what was then article V, section 11(a) (now section 11(b)), as applying "only in those instances where the elective process is not

available.” *Id.* at 783. Further, the court explained that:

[s]ection 11(a) does not contemplate a strained application which would give priority to the appointive power over the paramount elective process when there is a known vacancy to occur in conjunction with and reasonably before a judicial election; the elective machinery should be allowed to function to provide the successor.

Id.

In *In re Advisory Opinion to the Governor*, however, the supreme court effectively limited the application of *Spector* to situations in which a judge resigns effective at a future date and no interim vacancy will exist. See *In re Advisory Opinion to the Governor*, 600 So.2d at 462. The supreme court advised the governor that, where a judge resigned effective August 1, 1992, but filling the vacant seat with an elected judge would mean that the office would remain vacant from August 1992 through January 1993, “because no unreasonable vacancy should exist, it is your [the governor’s] duty to appoint someone for the August 1, 1992 to January 5, 1993 time period if this can be accomplished.” *Id.* at 463. Thus, *Spector*, as limited by *In re Advisory Opinion to the Governor*, does not limit the governor’s power to fill an interim vacancy.

Pincket further argues that *Judicial Nominating Commission, Ninth Circuit v. Graham*, 424 So.2d 10 (Fla.1982), also requires that the vacant seat be filled by an elected individual rather than an appointed one. In *Graham*, the Ninth Circuit judicial nominating commission sought a writ of mandamus directing Florida Governor Robert Graham to appoint replacements to fill trial court judicial vacancies rather than fill the vacancies with elected judges.

2. However, the court in *Graham* further refined the holding in *Spector* by stating that: if an irrevocable communication of an impending vacancy is presented to the governor at the time of or after the first primary, then we have held there is insufficient time

The Florida Supreme Court, citing *Spector*, noted that it had held when “a judicial vacancy is known reasonably in advance of an intervening primary and general election, the vacancy must be filled by election.”² *Graham*, 424 So.2d at 11. The court construed the pre-1996 amendment version of article V, section 11(b) and concluded that section 11(b), as well as section 11(c), provided for the governor to appoint eligible candidates to fill the vacancies, “but only for a term which ends in January of the year following the next primary and general election.” *Id.* at 11. The court noted that this interpretation of article V, section 11, would have the practical effect of causing judicial vacancies to remain unfilled for an untenable time period because most individuals would not choose to be considered for a judicial appointment in which they would serve relatively briefly. See *id.* at 12. The court recognized that the likely result would be that vacancies occurring between July 1 and September 1 would not be filled until January 1. The court noted that the problem created by the “temporary loss of judicial manpower” would be eliminated with one of the suggested remedies as presented by the 1978 Constitutional Revision Commission. See *id.* at 12. The suggestion was to provide for the filling of trial court vacancies in the same manner as appellate court vacancies, with the appointment being for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment. Adding the phrase “occurring at least one year after the date of appointment” would have eliminated the problem that the Ninth Circuit is experiencing in this case.

Id. at 12.

The constitutional amendment at issue in this case was submitted to the electors

to use the primary and general election process during that year and the governor is authorized to use the merit selection process for a term ending in January following the general election two years later.

Graham, 424 So.2d at 12.

and approved at the general election in November 1996, after a Florida Article V Task Force was created in 1995 and the Task Force developed the model legislation to amend the constitution.

Hence, the suggestions recognized by the *Graham* court were incorporated into article V, section 11(b) by the people. While the amended article standing alone may not appear to provide the governor with the authority to appoint a qualified individual to fill a vacant circuit court seat when an election is scheduled within the foreseeable future, when read in conjunction with the *Graham* language discussing difficulties with appointing qualified individuals to serve relatively briefly on the circuit bench, and the attendant suggested constitutional amendment language, it is clear that the 1996 amendment was intended to provide the governor with authority to appoint qualified individuals to serve in the position of the former incumbent judge, when the vacancy occurs as it did in the present case. While Pincket urges this court to adopt the rationale contained within cases and materials pre-dating the 1996 amendment of article V, section 11(b), which appear to suggest that election should be favored over appointment, we conclude that the 1996 amendment supersedes these earlier cases and materials, and it is now the "dominant law of the subject matter." *Wilson v. Crews*, 160 Fla. 169, 174, 34 So.2d 114, 117 (1948) (stating that "[w]here there is a repugnancy between a constitutional amendment and some provision in the original, which cannot be so construed as to have them both stand and leave to each a legitimate office to perform, the original must be deemed to have been repealed by the amendment" (citation omitted)). The constitutional amendment strikes a proper balance between the concern for a minimum term of service for successor judges and the policy favoring elections. In the context of this case, the constitutional amendment permits the Governor to make a judicial appointment for the current vacancy in the Tenth Judicial Circuit.

Because Pincket has not met his burden of demonstrating that the Secretary of State violated Pincket's clear legal right while also breaching the Secretary of State's indisputable, ministerial, legal duty, we cannot conclude that the trial judge abused his discretion by denying Pincket's petition. We therefore affirm.

AFFIRMED.

WOLF and VAN NORTWICK, JJ.,
CONCUR.



Jason MAHAFFEY, Appellant,

v.

STATE of Florida, Appellee.

No. 1D99-2869.

District Court of Appeal of Florida,
First District.

Aug. 22, 2000.

An appeal from the Circuit Court for Okaloosa County. Thomas T. Remington, Judge.

Appellant, pro se.

Robert A. Butterworth, Attorney General, and Elizabeth Fletcher Duffy, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. *See, e.g., Green v. State*, 698 So.2d 575, 576 (Fla. 5th DCA 1997);

MacMillan also argues that the referee's findings relating to these omissions from the guardian report are in conflict. Although one sentence of the referee's report states that MacMillan "neglect[ed] to report" the transfers to the court, a reading of the entire report leaves no doubt that the referee found that MacMillan "intentionally misrepresented to the court the receipts and disbursements" of Ellison's property. Thus, we approve the referee's findings of fact.

[3,4] Additionally, MacMillan claims that a ninety-one-day suspension is a more fitting punishment for his misconduct. The Florida Bar urges that the Court approve the referee's recommended two-year suspension.

"This Court has repeatedly asserted that misuse of client funds is one of the most serious offenses a lawyer can commit and that disbarment is presumed to be the appropriate punishment." *The Fla. Bar v. Shanzer*, 572 So.2d 1382, 1383 (Fla.1991). Indeed, *Florida's Standards for Imposing Lawyer Sanctions* provides that "[d]isbarment is appropriate when a lawyer intentionally or knowingly converts client property regardless of injury or potential injury." *Florida's Standards for Imposing Lawyer Sanctions* § 4.11 (Fla. Bar Bd. Governors 1986). Likewise, standard 6.11 calls for disbarment when a lawyer knowingly submits a false document with the intent to deceive the court. *Id.* § 6.11. Under these standards, disbarment is presumptively the appropriate discipline for the type of misconduct present in this case. However, this presumption can be rebutted by various acts of mitigation, such as cooperation and restitution. *The Fla. Bar v. Schiller*, 537 So.2d 992 (Fla.1989). Even considering the significant mitigating factors present in this case, we find that no less than the discipline recommended by the referee is warranted.

We accordingly approve the report of the referee, and suspend Hugh MacMillan, Jr. from the practice of law for a period of two years. Upon filing of this opinion, MacMillan shall accept no new business. To allow MacMillan thirty days to close his practice

in an orderly fashion and thereby protect the interests of his clients, suspension is effective on June 22, 1992. Additionally, MacMillan is required to take and pass the ethics portion of The Florida Bar Examination before he may resume the practice of law. Judgment is entered against MacMillan for costs in the amount of \$2,155.47, for which sum let execution issue.

It is so ordered.

SHAW, C.J., and OVERTON,
McDONALD, GRIMES, KOGAN and
HARDING, JJ., concur.

BARCKETT, J., recused.



**In re ADVISORY OPINION TO THE
GOVERNOR (Judicial Vacancies).**

No. 79694.

Supreme Court of Florida.

June 1, 1992.

Question was propounded by Governor to Justices of Supreme Court relating to appointment of judge to fill vacancy created by resignation. The Justices of the Supreme Court were of opinion that: (1) nominating commission's list of nominees should be submitted within 30 days of governor's acceptance of resignation; (2) members of nominating commission could vote on nominee for vacancy; and (3) governor had duty to appoint interim judge for period between resignation and commencement of elected judge's term.

Questions answered.

1. Courts ⇐208

Constitution allowed Supreme Court to answer question posed by governor regarding duties of judicial nominating commissions where fulfillment of commissions' re-

sponsibilities was integral part of governor's constitutional duty to fill vacancies in judicial offices, even though question related to duties of someone other than governor. West's F.S.A. Const. Art. 4, § 1(c); Art. 5, § 11(a).

2. Judges ⇐8

When letter of resignation to be effective at later date is received from judge and accepted by governor, a vacancy in that office occurs and actuates process to fill it; duties of appropriate nominating commission start and its list should be submitted within 30 days of governor's acceptance of resignation unless extended additional 30 days. West's F.S.A. Const. Art. 5, § 11(a).

3. Judges ⇐3

Judicial nominating commission's job begins when governor receives and accepts letter of resignation; its task is to recommend three people, not to appoint, and is not affected by date when appointed judge begins to serve. West's F.S.A. Const. Art. 5, § 11(a).

4. Judges ⇐8

Members of judicial nominating commission whose terms were to expire July 1 could vote on nominees for vacancy created by resignation of judge on March 3 even though resignation was to be effective July 31. West's F.S.A. Const. Art. 5, § 11(a).

5. Judges ⇐8

It was governor's duty to appoint interim judge for period between vacancy which occurred on July 31, 1992 and commencement of elected judge's term on January 5, 1993 where ample time existed for interested persons to qualify for that position in July for 1992 election for term to commence in January, and it was impracticable and not necessary to hold special election for time between vacancy and commencement of regular term. West's F.S.A. Const. Art. 5, § 11(a).

Lawton Chiles, Governor, Tallahassee, for petitioner.

The Honorable Lawton Chiles
Governor of the State of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

We acknowledge your communication of April 14, 1992 requesting our advice pursuant to section 1(c), article IV of the Constitution of the State of Florida. We have disseminated to the press a report of your request and have sent copies of your request to the judicial nominating commissions of each judicial circuit, each appellate district, and the Supreme Court, inviting responses to your letter.

The essential facts and the questions posed in your letter are as follows:

The Honorable Richard S. Fuller, Circuit Judge for the Eleventh Circuit, resigned on March 3, 1992, the resignation to be effective July 31, 1992. I accepted Judge Fuller's resignation on March 10 and simultaneously notified the Judicial Nominating Commission, Eleventh Circuit of the vacancy. The filling of this vacancy or prospective vacancy raises questions with regard to the gubernatorial appointment power under Article V of the Florida Constitution which, in order to answer, would appear to require the resolution of two collateral issues.

The first such question involves the duty of a judicial nominating commission to provide nominations to me within 30 days from the "occurrence of a vacancy". Art. V, § 11(c), Fla. Const. Several judicial nominating commissions have taken the position that the term "vacancy" in this regard relates to an effective vacancy. For example, the Honorable Thomas M. Coker, Jr., Circuit Judge for the Seventeenth Circuit resigned on September 16, 1991, effective February 1, 1992. It is the view of the Judicial Nominating Commission, Seventeenth Circuit, that its nominations for Judge Coker's seat are not due until thirty days after February 1, 1992; a thirty-day extension was requested and granted, therefore I have not yet received nominations for this vacancy. The Honorable Royce Agner, Circuit Judge for the Third Circuit, resigned on February 3, 1992, effective April 20,

1992. We have not yet received the nominations from the Judicial Nominating Commission, Third Circuit, for Judge Agner's seat. However, the majority of nominating commissions provide nominations within 30 days of an actual vacancy. It is my understanding that for Judge Fuller's vacancy the Judicial Nominating Commission for the Eleventh Circuit will submit nominations within 60 days of the actual vacancy, the Governor having granted a 30-day extension.

* * * * *

A second collateral question relates [to] whether three members of the Judicial Nominating Commission for the Eleventh Circuit, whose terms expire July 1, 1992, can vote on the nomination for Judge Fuller's vacancy.

* * * * *

In view of these questions concerning Article V, I am in doubt concerning my duties and responsibilities regarding the appointment of judges. I have the honor, therefore, to request your written opinion on the following questions:

1. Is the submission of nominations for appointment to a judicial vacancy due to the Governor within 30 days of an actual vacancy rather than within 30 days of an effective vacancy?

2. Presuming the response to my first inquiry is in the affirmative, and presuming members of the nominating commission will not be required to hold over in office, does the Governor have the power and authority to appoint from nominations made by the Judicial Nominating Commission, Eleventh Circuit?

3. Presuming the response to my first inquiry is in the affirmative, do I have the power and authority to appoint a judge for the period of August 1, 1992 through the date the vacancy created by the resignation of Judge Fuller is filled by an elected judge, (January 5, 1993)?

[1] As to the first question, you suggest that the answer should be that the

1. Supreme Court judges and appellate court judges are no longer elected. Circuit judges are elected, even though in the minds of many their

nominating commissions' responsibility begins upon your acceptance of a letter of resignation. Before we respond we must decide whether article IV, section 1(c) allows us to answer this question because it is directed to the duties of someone other than yourself. We believe we can because the fulfillment of the nominating commissions' responsibilities is an integral part of your constitutional duty to fill vacancies in judicial offices. See *In re Advisory Opinion*, 276 So.2d 25 (Fla.1973). Article V, section 11(a) requires that you appoint from a list supplied by a nominating commission, and, therefore, you cannot perform your duty until a nominating commission performs its duty.

[2] Vacancies in office are to be avoided whenever possible. We are confident that the framers of article V intended that the nominating and appointment process would be conducted in such a way as to avoid or at least minimize the time that vacancies exist. Judges are encouraged to and do submit their resignations, to be effective in the future, at a time that permits the process to proceed in an orderly manner and keep the position filled.

In *Spector v. Glisson*, 305 So.2d 777 (Fla. 1974), this Court ruled that a vacancy in office occurred when Justice Ervin tendered his resignation in the summer of 1974 to be effective the following January, thus allowing an election to fill the vacancy.¹ The rationale of *Spector* applies to a situation where a sitting judge unequivocally resigns effective at a future date. When a letter of resignation to be effective at a later date is received and accepted by you, a vacancy in that office occurs and actuates the process to fill it. The duties of the appropriate nominating commission start and its list should be submitted within thirty days of your acceptance of the resignation unless extended an additional thirty days. The appointment shall be made within sixty days after receipt of the nomina-

selection and retention should be similar to that of appellate judges.

tions.²

[3, 4] Your second question asks whether three members of the Judicial Nominating Commission for the Eleventh Circuit, whose terms expire July 1, 1992, can vote on the nominees for Judge Fuller's vacancy. Our answer to the first question necessarily calls for an affirmative answer to this question as well. A nominating commission's job begins when you receive and accept a letter of resignation. Its task is to recommend three people, not to appoint, and is not affected by the date when the appointed judge begins to serve.³

[5] Your last question asks whether you may appoint a person to fill Judge Fuller's vacancy for the period of August 1, 1992 through the date the vacancy created by the resignation of Judge Fuller is filled by an elected judge. In *Judicial Nominating Commission, Ninth Circuit v. Graham*, 424 So.2d 10 (Fla.1982), we held that the Constitution mandates an election when sufficient time affords the electorate the opportunity to fill a judicial vacancy. In doing so we indicated that, because of practical problems, an interim appointment might be difficult to achieve, resulting in a circuit being deprived of a judge for up to six months. We did not intend to prohibit an interim appointment effective to the time an elected judge assumes office. Indeed, we had previously said in *In re Advisory Opinion*, 301 So.2d 4, 6 (Fla.1974), that "[i]t is clear that the present constitutional provision contemplates the utilization of the new appointive process to fill judicial vacancies until the next judicial election."⁴ We should have been more precise and directed appointments that would hold office until the date that the terms of those elected commence. Ample time exists for interested persons to qualify for this position in July for the 1992

election for a term to commence in January 1993. It is impracticable and therefore not necessary to hold a special election for the time between July 31 and the commencement of a regular term. Again, because no unreasonable vacancy should exist, it is your duty to appoint someone for the August 1, 1992 to January 5, 1993 time period if this can be accomplished.

Respectfully,
 Leander J. Shaw, Chief Justice
 Ben F. Overton, Justice
 Parker Lee McDonald, Justice
 Rosemary Barkett, Justice
 Stephen H. Grimes, Justice
 Gerald Kogan, Justice
 Major B. Harding, Justice



**MAISON GRANDE CONDOMINIUM
 ASSOCIATION, INC., Appellant,**

v.

DORTEN, INC., et al., Appellees.

No. 78197.

Supreme Court of Florida.

June 4, 1992.

Lessor of pool deck brought action against condominium association seeking declaratory judgment in amounts owed under lease. The Circuit Court, Dade County, Steven D. Robinson, J., granted relief, and association appealed. The District Court of Appeal, 580 So.2d 859, affirmed judgment and certified question. The Supreme Court held that: (1) escalation clause was en-

2. There seems to be a question whether the governor can make that appointment when the appointed judge will not start serving until after the governor's term ends. This is not involved in your question, and we do not answer it here.

3. We disagree with the opinion of the Attorney General, 1990 Op. Att'y Gen. Fla. 094-94 (June 26, 1990).

4. *In re Advisory Opinion*, 301 So.2d 4, 6 (Fla. 1974), also states: "We recognize that a vacancy does not occur until the date upon which the office actually becomes vacant." *Spector v. Glisson*, 305 So.2d 777 (Fla.1974), nullified this statement.

Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), because it allows a judge to make findings as to aggravating circumstances necessary for imposition of the death penalty, rather than requiring those findings to be made by a unanimous jury. Specifically, Bevel argues that his sentence is unconstitutional because, although the jury recommended death by a vote of twelve to zero for the murder of Sims, there was no unanimous finding of the death penalty aggravators as to the murder of Stringfield because the jury recommended death by a vote of eight to four.

[36] Where one of the aggravating circumstances is a “prior violent felony” conviction, this Court has consistently held that *Apprendi* and *Ring* do not apply. See, e.g., *Bryant v. State*, 901 So.2d 810, 823 (Fla.2005); see also *Robinson v. State*, 865 So.2d 1259, 1265 (Fla.2004); *Jones v. State*, 855 So.2d 611, 619 (Fla.2003). In this case, the trial court found the prior violent felony aggravator applicable to both death sentences. Because we have held that *Apprendi* and *Ring* are inapplicable where one of the aggravating circumstances is a prior violent felony conviction, we reject Bevel’s argument. See, e.g., *Bryant*, 901 So.2d at 823; *Robinson*, 865 So.2d at 1265. Additionally, the jury voted unanimously to recommend the death penalty as to the murder of Sims and we have previously rejected *Apprendi/Ring* claims in other direct appeals involving unanimous death recommendations. See, e.g., *Crain v. State*, 894 So.2d 59, 78 (Fla.2004).

CONCLUSION

For all the foregoing reasons, we affirm Bevel’s first-degree murder convictions and his sentences of death.

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.



ADVISORY OPINION TO the GOVERNOR RE APPOINTMENT OR ELECTION OF JUDGES.

No. SC08-844.

Supreme Court of Florida.

May 19, 2008.

Original Proceeding—Advisory Opinion to the Governor.

Jason Brent Gonzalez, General Counsel, Office of the Governor, Tallahassee, FL, for The Honorable Charles J. Crist, Jr., Governor of Florida.

Ronald G. Meyer and Janeia R. Daniels of Meyer and Brooks, P.A., Tallahassee, FL, on behalf of Nina Ashenafi Richardson; Robert A. Harper, III of Harper and Harper Law Firm, P.A., Tallahassee, FL, on behalf of Sean Desmond; and Robert Rivas and Jessica Slatten of Sachs and Sax, P.A., Tallahassee, FL, and Richard M. Benham of the Law Office of Richard M. Benham, P.A., Tallahassee, FL, on behalf of Ion Sancho, Supervisor of Elections of Leon County; Jose Bias Lorenzo, Jr., Ph. D., Chair, Judicial Nominating Commission for the Second Judicial Circuit, Tallahassee, FL, for Interested parties.

The Honorable Charlie Crist
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Governor Crist:

By letter dated May 5, 2008, you requested our opinion on a question of constitutional interpretation involving your executive powers and duties with regard to a judicial vacancy in the Leon County Court. This request and our response are pursuant to article IV, section (1)(c) of the Florida Constitution.¹

Your letter provided as follows:

This question has arisen in the context of the recent vacancy in Leon County Court Seat 5. Seat 5 was previously scheduled for election in the 2008 general election cycle with the qualifying period scheduled to commence at noon, Monday April 28, 2008, and continue through noon, Friday, May 2, 2008. On April 30, 2008, the Court entered an order declaring incumbent Judge Timothy D. Harley to be involuntarily retired from judicial service effective midnight on the date of the order.

In an advisory opinion issued in 2002, the Justices of the Court opined that circuit and county court vacancies are filled by gubernatorial appointment, unless the vacancy occurs after the "election process" begins, which the Justices found to be "when a candidate or candidates have qualified for the circuit or county judgeship." *In re Advisory Opinion to Governor re: Appointment or Election of Judges*, 824 So.2d 132, 135 (Fla.2002). According to the Leon County Supervisor of Elections (the "Supervisor"), at the time the Leon County Court vacancy occurred at midnight, April 30, 2008, no candidate or candidates had qualified for the judgeship. After receiving that information, and in

accordance with the Court's 2002 advisory opinion to the Governor, my General Counsel notified the Judicial Nominating Commission for the Second Judicial Circuit (the "JNC") of the vacancy and constitutional requirement that the JNC submit a list of nominees to the Governor within thirty days from the date of the vacancy. On May 1, 2008, the INC advertised the vacancy and application deadline.

On May 1, 2008 my legal counsel contacted the Leon County Supervisor of Elections, and informed him that the JNC had been notified of the vacancy and commenced the judicial nominating process. The Supervisor informed my counsel that he was aware of the vacancy to be filled by gubernatorial appointment and that he intended to refuse to accept qualifying papers from individuals attempting to qualify on May 1, 2008. On Friday, May 2, 2008, the Supervisor contacted my legal counsel and informed him that, upon further review, the Supervisor had reversed his position and determined that, despite commencement of the JNC process, he had a ministerial duty to accept qualifying papers and fees. On the morning of May 2, 2008, prior to the noon qualifying deadline, the Supervisor also affirmatively advised three candidates of his reversal and qualified these candidates for Leon County Court, Seat 5, all of whom the Supervisor had refused to qualify on May 1, 2008. Consequently, both the appointment and election processes are now underway to fill the same vacancy.

... In order to minimize hardship on the Leon County Court, I intend to fill

1. Article IV, section (1)(c) provides in full:

The governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties. The justices shall, subject to their

rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion not earlier than ten days from the filing and docketing of the request, unless in their judgment the delay would cause public injury.

the vacancy in June 2008, resulting in a vacancy of no more than 30 to 60 days. By contrast, if the vacancy were to be filled by election, Seat 5 would be unoccupied for more than eight months from May 1, 2008 until January 6, 2009.

....

... I respectfully request an opinion of the Justices of the Supreme Court as to whether the Governor's constitutional obligation under article V, section 11(b), Florida Constitution, to fill a vacancy on a circuit or county court by appointment continues until a candidate or candidates have qualified for the office, irrespective of whether the statutory qualifying period has commenced.

Letter from Governor Charlie Crist to Chief Justice R. Fred Lewis dated May 5, 2008, at 1-4. On May 6, 2008, this Court issued an order permitting all interested parties to file briefs on an expedited basis.²

ANALYSIS

The instant inquiry arises because the Florida Constitution contains two conflicting provisions with regard to the filling of judicial vacancies. Article V, section 11(b) governing judicial vacancies provides that "the governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission." Conversely, the portion of article V that addresses judicial elections specifically provides that the election of circuit and county court judges "shall be

preserved." Art. V, § 10(b)(1)-(2), Fla. Const. When this Court previously addressed whether a vacancy caused by the involuntary retirement of a judge was to be filled by election or appointment, we explained:

Article V, section 10(b)(3) required a referendum in the year 2000 to be placed before the voters in each of Florida's twenty judicial circuits and sixty-seven counties concerning the method of selection of circuit and county judgeships. *See generally Kainen v. Harris*, 769 So.2d 1029 (Fla.2000). A majority of the voters within the territorial jurisdiction of each judicial circuit court and county court voted to retain the election of those judges instead of replacing the elective system with a merit-selection system for those courts....

....

In view of this conflict between sections of the constitution, we conclude that *the conflict must be resolved by a construction which gives effect to the clear will of the voters that circuit and county judges be selected by election.*

Advisory Opinion to Governor re Appointment or Election of Judges, 824 So.2d 132, 135-36 (Fla.2002) (emphasis supplied); *see also Judicial Nominating Comm'n, Ninth Circuit v. Graham*, 424 So.2d 10, 10 (Fla. 1982) ("[T]he constitution *mandates an election* when there is *sufficient time* to afford the electorate an opportunity to fill a judicial vacancy." (emphasis supplied)). Accordingly, we have previously held that once the "*election process begins*," a vacancy in the county or circuit court is to be filled by election. *Appointment or Election of Judges*, 824 So.2d at 136 (emphasis supplied).

The issue the Court faces in the instant matter is when the "election process" began for Leon County Court Seat 5. *See id.*

2. Briefs were filed by the Supervisor of Elections of Leon County, Ion Sancho, and by

candidates Nina Ashenafi Richardson and Sean Desmond.

In *Appointment or Election of Judges*, this Court stated that the election process had begun when a candidate or candidates had qualified for the circuit or county judgeship. See *id.* at 135. In the 2006 opinion *Advisory Opinion to Governor re Sheriff & Judicial Vacancies Due To Resignations*, 928 So.2d 1218, 1221 (Fla.2006), this Court stated that “establishing the statutory qualifying period as the start of the election process is consistent with our precedent.” (Emphasis supplied.) The 2002 and 2006 advisory opinions arose from distinctly different factual circumstances. In *Appointment or Election of Judges*, a judge was involuntarily retired after the qualifying period had ended and after three candidates had already qualified to run for that judicial position. See 824 So.2d at 133–34. Conversely, in *Sheriff & Judicial Vacancies*, the qualifying period had not yet commenced, and, accordingly, no individual had qualified for the judicial office at the time the vacancy occurred. See 928 So.2d at 1219.

In the instant case, the involuntary retirement of Judge Harley and the vacancy occurred after the commencement of the qualifying period and after conduct by the candidates who sought to qualify had begun. See *Inquiry Concerning a Judge v. Timothy David Harley*, No. SC08–685, 2008 WL 1930815 (Fla. Apr.30, 2008) (unpublished order) (approving stipulation and declaring Judge Harley to be involuntarily retired as of midnight, April 30, 2008); § 105.031, Fla. Stat. (2007) (“Candidates for judicial office shall qualify no

earlier than noon of the 120th day, and no later than noon of the 116th day, before the primary election.”); *2008 County Election Information Sheet*, available at <http://www.leoncountyfl.gov/elect/?page=Candidates&Reports/2008FilingAndQualifying.asp> (qualifying dates for 2008 county court judge positions are from 12 p.m. on April 28, 2008, until 12 p.m. on May 2, 2008).³ Accordingly, the question we address is whether the “election process” had already begun where this involuntary retirement occurred in the middle of the statutory qualifying period.

Upon our review of prior advisory opinions which address whether a judicial vacancy is to be filled by election or appointment, we determine that our 2006 opinion provides the answer to your inquiry—our precedent establishes “the statutory qualifying period as the start of the election process.” *Sheriff & Judicial Vacancies*, 928 So.2d at 1221. Pursuant to the Florida Statutes, the 2008 “election process” for Leon County Court Seat 5 commenced at noon on April 28, 2008 and terminated at noon on May 2, 2008. See § 105.031, Fla. Stat. (2007). Judge Harley was not involuntarily retired and the vacancy did not occur until April 30, 2008—during the qualifying period—and therefore, the vacancy created by his retirement is to be filled by election. Our two prior cases related to this issue addressed a vacancy before the qualifying period had begun and a vacancy after the qualifying period had terminated. This case addresses a vacancy during a qualifying period. Applying

3. The information submitted to this Court indicates that each of four candidates made steps to qualify as a judicial candidate prior to the involuntary retirement of Judge Harley. Some candidates acted much earlier than others. One of the qualifying candidates and the incumbent candidate acted in February 2008, well in advance of the statutory qualifying period. In March 2008, both of these candidates submitted to the Supervisor of Elections

a number of signed elector petitions which would allow them to qualify their candidacies without the payment a filing fee. Moreover, by the time Judge Harley became involuntarily retired and the vacancy occurred, all candidates had filed the required “Statement of Candidate” and the “Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates,” required by the Florida Statutes.

our opinions in both *Appointment or Election of Judges* and *Sheriff & Judicial Vacancies*, we hold under the facts presented in this case that a vacancy which occurs during a qualifying period in which any candidate qualifies for the judicial office is to be filled by election.

In *Appointment or Election of Judges*, this Court expressly stated that our determination was “limited to the circumstances described in [the Governor’s] letter, i.e., where a candidate or candidates have already qualified during the statutory qualifications period, one of whom will fill the position by election.” See 824 So.2d at 136. We therefore addressed those specific facts. The instant matter presents different facts from those we addressed in *Sheriff & Judicial Vacancies*, but our basic holding defining the “election process” remains consistent and is dispositive in our decision today.

A set date for commencement of the “election process” provides a definitive time period and a practical answer to the election-versus-appointment conundrum with regard to defining an “election process.” The establishment of a fluctuating date based upon some variable factor such as when potential candidates take specific actions toward qualifying for candidacy, or when the first candidate qualifies, would inject uncertainty into defining the “election process.” If we were to conclude that the process begins upon the occurrence of one of these variable factors, new facts could arise during every election year, and this Court would routinely be called upon to determine the precise commencement of any particular “election process.” The determination of constitutional provisions

should not vary based upon fluctuations of the individual “election process” for a given year.⁴ Instead, a fixed date for defining the “election process”—one which is derived from Florida statutory law—ensures that the will of the people that circuit and county court judges be elected is preserved. See *Appointment or Election of Judges*, 824 So.2d at 136 (conflicting constitutional provisions that address judicial vacancies “must be resolved by a construction which gives effect to the clear will of the voters that circuit and county judges be selected by election”).

CONCLUSION

Accordingly, we answer your question with regard to the judicial vacancy created by the involuntary retirement of Judge Timothy Harley by stating it is our opinion that the vacancy is to be filled by election.

Respectfully,

/s/ R. Fred Lewis
R. Fred Lewis

/s/ Charles T. Wells
Charles T. Wells

/s/ Harry Lee Anstead
Harry Lee Anstead

/s/ Barbara J. Pariente
Barbara J. Pariente

/s/ Peggy A. Quince
Peggy A. Quince

/s/Raoul G. Cantero, III
Raoul G. Cantero, III

/s/ Kenneth B. Bell
Kenneth B. Bell



4. Indeed, in our 2006 decision *Sheriff & Judicial Vacancies*, we noted that several individuals had already stated their intent to run for the judgeship, and at least one individual had actively pursued qualification prior to the commencement of the qualification period.

See 928 So.2d at 1220. Despite the actions taken by these individuals, we nonetheless concluded that the election process began on the date when the statutory qualification period commenced. See *id.* at 1220–21.

ADVISORY OPINION TO The GOVERNOR re JUDICIAL VACANCY DUE TO MANDATORY RETIREMENT.

No. SC06-1184.

Supreme Court of Florida.

Sept. 15, 2006.

Background: Governor requested advisory opinion on when a vacancy occurs resulting from the mandatory retirement of a judge who is not eligible for retention.

Holding: The Supreme Court held that vacancy in office of merit retention judge, who was ineligible for retention due to mandatory retirement, would not occur until the expiration of the judge's term.

Question answered.

Raoul G. Cantero, III, J., concurred and filed opinion in which Kenneth B. Bell, J., joined.

Judges ⇄8

Vacancy in office of merit retention judge, who was ineligible for retention due to mandatory retirement, would not occur until the expiration of the judge's term. West's F.S.A. Const. Art. 5, §§ 8, 10(a).

Raquel A. Rodriguez, General Counsel, Nathan A. Adams, IV, Deputy General Counsel, and Gladys Perez, Assistant General Counsel, Office of the Governor, Tallahassee, for Petitioner, The Honorable Jeb Bush.

1. Article IV, section (1)(c) provides in full:

The governor may request in writing the opinion of the justices of the supreme court as to the interpretation of any portion of this constitution upon any question affecting the governor's executive powers and duties. The justices shall, subject to their

Jason Brent Gonzalez, Chairman, Judicial Nominating Commission for the First District Court of Appeal, Tallahassee, responding with comments.

The Honorable Jeb Bush
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Governor Bush:

By letter dated June 20, 2006, you requested our opinion on a question of constitutional interpretation involving your executive powers and duties with regard to a mandatory judicial vacancy in the First District Court of Appeal. This request and our response is pursuant to article IV, section (1)(c) of the Florida Constitution.¹

Your letter provided the relevant facts as follows:

Judge Richard Ervin, III, a judge of the First District Court of Appeal, was born on October 16, 1934. On that day in 2004, Judge Ervin turned seventy years old. Article V, section 8 of the Florida Constitution provides that "[n]o judge or justice shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served." Judge Ervin's term ends on January 1, 2007. Because of mandatory retirement, he was ineligible for retention and did not seek to qualify for retention during the qualifying period, May 8-12, 2006.

Article V, section 10 provides that "[i]f a justice or judge is ineligible or fails to qualify for retention, a vacancy shall ex-

rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion not earlier than ten days from the filing and docketing of the request, unless in their judgment the delay would cause public injury.

ist in that office upon the expiration of the term being served by the justice or judge." Article V, section 11(a) provides for the Governor to fill a vacancy in a judicial office to which election for retention applies.

Although I understand that a physical vacancy occurs upon the termination of the term, a question has arisen as to when a constitutional vacancy occurs, effectuating the process to fill it. If a constitutional vacancy occurs upon the failure of a judge to qualify for retention, the judicial nominations commission must submit nominations to me within 30 days from the occurrence of the vacancy, unless extended by me for another 30 days. Art. V, sec. 11(c), Fla. Const. In such instance, I will be able to appoint a successor who can take office immediately after the conclusion of Judge Ervin's term, and there will be no prolonged vacancy on the First District Court of Appeal. If a constitutional vacancy occurs only at the expiration of his term, the nominations may not be made until thirty to sixty days thereafter, and it may be as late as May 2007 before a successor is appointed, leaving a four month vacancy on the court.

Therefore, I respectfully request an opinion of the Justices of the Supreme Court as to the question of when a vacancy occurs resulting from the mandatory retirement of the judge who is not eligible for retention.

Letter from Governor Jeb Bush to former Chief Justice Barbara Pariente (June 20, 2006) (on file with Clerk, Supreme Court of Fla.), at 1-2. Judge Ervin two days later wrote a letter to you announcing that he would complete his term on the First District Court of Appeal, but was constitutionally prohibited from serving an additional term.

ANALYSIS

Article V, section 8, of the Florida Constitution provides, in pertinent part, "No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served." Art. V, § 8, Fla. Const. Article V, section 11 of the Florida Constitution, titled Vacancies, delineates the Governor's duties when a vacancy occurs in a judicial office:

(a) Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission.

....

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to the governor.

Art. V, § 11(a),(c), Fla. Const.

Our response to your question is compelled by the fact that there is a specific constitutional provision that expressly provides that a vacancy in a merit retention judicial office does not occur until the end of the judge or justice's term. Article V, section 10(a), of the Florida Constitution states: "If a justice or judge is ineligible or fails to qualify for retention, a *vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.*" (Emphasis added.) The letter of a merit retention judge or justice an-

nouncing his or her mandatory retirement at the end of the term does not create a vacancy in that judicial office until the actual date that the judge or justice's term expires pursuant to the specific constitutional provision which addresses when a "vacancy" occurs.

To understand the distinction between elected and retained judges, it is instructive to review the constitutional history regarding judicial vacancies. Prior to a 1976 amendment implementing the merit retention of Florida Supreme Court justices and district court of appeal judges, the Florida Constitution did not contain a specific explanation of when judicial positions become "vacant." This Court in *Spector v. Glisson*, 305 So.2d 777 (Fla. 1974), a case involving a non-merit retention judicial resignation prior to the amendment, noted:

A thorough search of the Florida Constitution reveals that ONLY in general Art. X, § 3, new in the 1968 Constitution, is there a definition of when a vacancy occurs, that section providing that a vacancy in office "shall occur" upon *inter alia* "resignation." Nowhere else therein is a vacancy in office defined; the other related provisions, including the specific one as to judges, state how and when it is to be filled, but not when it OCCURS.

Id. at 779. In the absence of a specific provision governing judicial vacancies, the Court in *Spector* referred to article X, section 3, the provision of the Florida Constitution that governed vacancies in office in general, to determine when a judicial vacancy occurred:²

2. Article X, section 3, of the Florida Constitution currently provides:

Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty con-

The 1885 Constitution in Art. IV, § 7, authorized the Governor to fill a vacancy "(W)hen any office, from any cause, shall become vacant" Now, however, the current 1968 constitutional provision controls and also takes precedence over statutes such as Fla. Stat. § 114.01 providing that an office shall be "deemed vacant" in cases there enumerated, one being "resignation." . . . Thus, absent a specific provision in the 1968 Constitution as to judges (as there is in Art. V, §§ 10 and 11 regarding the *manner* of filling the vacancy) the general provision must apply, that a vacancy "shall occur" upon "resignation."

Id. Relying on article X, section 3, the Court in *Glisson* concluded that the elected justice's resignation letter created a vacancy in that elected position. *See id.* at 780. However, this constitutional provision does not apply to the vacancy in Judge Ervin's position.

In 1976, the Florida Constitution was amended to implement a merit retention system for district court judges and Florida Supreme Court justices, and this amendment provided a specific explanation of when a vacancy occurs if a justice or judge is ineligible to qualify for merit retention:

If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office *upon the expiration of the term being served by the justice or judge.*

Art. V, § 10(a), Fla. Const. (emphasis sup-

secutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term. This provision clearly has no application to the current facts.

plied).³

This Court has determined that “[t]he rules which govern the construction of statutes are generally applicable to the construction of constitutional provisions.” *Coastal Fla. Police Benev. Ass’n, Inc. v. Williams*, 838 So.2d 543, 548 (Fla.2003). This Court has consistently stated that “[a]ny inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision’s explicit language. If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written.” *Id.* (quoting *Fla. Soc’y of Ophthalmology v. Fla. Optometric Ass’n*, 489 So.2d 1118, 1119 (Fla.1986)). We have further noted that “[t]he words and terms of a Constitution are to be interpreted in their most usual and obvious meaning, unless the text suggests that they have been used in a technical sense. The presumption is in favor of the natural and popular meaning in which the words are usually understood by the people who have adopted them.” *Butterworth v. Caggiano*, 605 So.2d 56, 58 (Fla.1992) (quoting *City of*

Jacksonville v. Cont’l Can Co., 113 Fla. 168, 151 So. 488, 489–90 (1933)).

The definition for when a vacancy occurs with regard to merit retention judges is clear and unambiguous—a vacancy exists upon the expiration of the term of the judge or justice. See art. V, § 10(a), Fla. Const. Therefore, we conclude that this constitutional provision must be applied in this circumstance as it is clearly written and as it was adopted by the voters. See *Williams*, 838 So.2d at 550; *Caggiano*, 605 So.2d at 58.⁴ Moreover, the lack of ambiguity in the Florida Constitution renders it unnecessary to review the history of the 1976 revision to article V, section 10, to determine when a vacancy in a merit retention judgeship occurs. See *Public Health Trust of Dade County v. Lopez*, 531 So.2d 946, 949 (Fla.1988) (“When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning”) (quoting *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984)).⁵

3. This language has not changed since the Florida Constitution was amended in 1976.

4. The language that was placed on the 1976 ballot further supports the conclusion that a vacancy is created upon the expiration of the term of a judge or justice who is ineligible to qualify for merit retention. The ballot language provided:

Proposing an amendment to the State Constitution to provide . . . that justices of the supreme court and judges of district courts of appeal submit themselves for retention or rejection by the electors in a general election every six years, and that failure to submit to a vote for retention or rejection, or a vote of rejection by the electors, will result in a vacancy in the office upon expiration of the current term

CS for SJR 49, 81 (1976) (proposed art. V, §§ 3, 10–11, Fla. Const.) (emphasis supplied).

5. Nonetheless, a commentary to the 1976 amendment to section 10(a) may be read to support the express language in the constitution that a vacancy occurs upon the expiration of the judge or justice’s term. The commentary provides in pertinent part:

The retention election poses the simple question “Shall the justice or judge be retained in office?” If the answer is yes, the justice or judge will serve a six-year term; if the answer is no, a vacancy is created and it will be filled through the nominating commission process.

Art. V, § 10, Fla. Const., 26 Fla. Stat. Ann. 51 cmt. (Supp.2006). Under this commentary, if the electors vote for retention, it is clear that the justice or judge “will serve a six-year term” from the date that his or her prior term expires (i.e., the six-year term does not commence at the time that the electors vote to retain the judge or justice). Thus, if the electors vote not to retain a judge, the vacancy similarly will occur at the expiration of the

Finally, since there is a specific provision in article V governing judges and justices who are subject to merit retention, the instant case is totally distinguishable from earlier judicial vacancy cases which involved elected judicial officials and in which the general definition of vacancy provided in article X, section 3, of the Florida Constitution was applied. See, e.g., *Advisory Opinion to the Governor re Sheriff & Judicial Vacancies Due to Resignations*, 928 So.2d 1218 (Fla.2006); *Advisory Opinion to the Governor re Appointment or Election of Judges*, 824 So.2d 132 (Fla.2002); *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460 (Fla.1992); *Judicial Nominating Comm'n, Ninth Circuit v. Graham*, 424 So.2d 10 (Fla.1982); *Spector v. Glisson*, 305 So.2d 777 (Fla.1974).

CONCLUSION

Accordingly, we answer your question regarding the mandatory retirement of Judge Ervin by stating it is our opinion that the clear and unambiguous language of article V, section 10(a) of the Florida Constitution dictates that Judge Ervin's position will become vacant when his term expires.

term served by that judge. There is no indication from the commentary that the date a judge or justice's term "expires," thereby leading to either the commencement of a new six-year term or a vacancy in that judgeship, varies based on whether the judge or justice has been, or is eligible to be, retained. Analogously, and more pertinent to the instant case, a judge who is subject to mandatory retirement under the constitution cannot con-

Respectfully,

/s/ R. Fred Lewis

R. Fred Lewis

/s/ Charles T. Wells

Charles T. Wells

/s/ Harry Lee Anstead

Harry Lee Anstead

/s/ Barbara J. Pariente

Barbara J. Pariente

/s/ Peggy A. Quince

Peggy A. Quince

/s/ Raoul G. Cantero, III

Raoul G. Cantero, III

/s/ Kenneth B. Bell

Kenneth B. Bell

CANTERO, J., concurring.

I agree with the majority that the plain language of the Florida Constitution dictates our answer to the Governor's question. I write only to emphasize that in these circumstances, nothing in the Florida Constitution prevents the relevant judicial nominating commission ("JNC") from beginning the process of nominating the retiring judge's successor before the vacancy actually occurs—that is, before expiration of the judge or justice's term. In terms of the nominating process, the Constitution requires only that "nominations shall be made within thirty days from the occurrence of the vacancy unless the period is extended by the governor for a time not to exceed thirty days." The constitution is silent on when the process must begin.⁶ We have previously emphasized,

control when the vacancy in his or her office will occur by writing a letter to the Governor announcing that he or she is prohibited from serving an additional term.

6. There may well be provisions of the Uniform Rules of Procedure for District Courts of Appeal Judicial Nominating Commissions relevant to this issue. I consider here only the requirements of the Florida Constitution.

however, that “[v]acancies in office are to be avoided whenever possible. We are confident that the framers of article V intended that the nominating and appointment process would be conducted in such a way as to avoid or at least minimize the time that vacancies exist.” *In re Advisory Opinion to the Governor (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla.1992).

Today’s opinion renders some period of vacancy virtually unavoidable when a justice or judge fails to qualify for a retention election. Unless the JNCs begin the nominating process before the vacancies actually occur, by requesting applications, interviewing applicants, and deliberating about potential nominees, that period may extend for up to four months before the governor appoints a successor. This period does not even account for the inevitable delay between the date of the appointment and the date the appointee actually takes office. Many appointments to the state appellate courts and to this Court entail relocations to another city, which can delay the process by several weeks. Thus, if JNCs were forced to wait until the outgoing judge leaves office before even advertising the opening, the affected court may be left without a necessary judge for months. In a court such as ours, where most cases are heard *en banc*, the burden on the remaining justices would be enormous.

In my opinion, the Florida Constitution grants the JNCs the flexibility to begin the nomination process before the vacancy actually occurs, therefore allowing them to minimize the period in which the position remains vacant. It is in the interest of the people of Florida that such vacancies be filled as quickly as possible.

BELL, J., concurs.



F.G., et al., Petitioners,

v.

AGENCY FOR PERSONS WITH
DISABILITIES, Respondent.

No. SC06-240.

Supreme Court of Florida.

Sept. 28, 2006.

Background: Officers of the Agency For Persons With Disabilities (APD) filed petition for writ of prohibition or certiorari, seeking to restrain Circuit Court from ordering officers to appear and produce documents relating to disabled minor’s status with respect to Medicare waiver program and receipt of services. The District Court of Appeal, 917 So.2d 887, granted prohibition. Minor appealed.

Holding: The Supreme Court, Cantero, J., held that Circuit Court had authority to subpoena information and testimony from APD.

Quashed and remanded.

1. Constitutional Law ⇌72

Witnesses ⇌5

Circuit Court had authority to subpoena information and testimony from Agency For Persons With Disabilities (APD) officers regarding disabled minor’s status with the Medicare waiver program and receipt of services, where subpoena did not require attendance of specified high-level officials within the APD, but allowed APD to substitute another official with knowledge, at its discretion.

2. Constitutional Law ⇌72

The separation of powers does not preclude a circuit court from calling before

trial court, and on which the section 768.28(8) fee cap was calculated is affirmed.

AFFIRMED.

DAVIS, VAN NORTWICK and
POLSTON, JJ., concur.



**THE JUSTICE COALITION, a Florida
not-for-profit corporation, and
Ted Hires, Appellants,**

v.

**THE FIRST DISTRICT COURT OF AP-
PEAL JUDICIAL NOMINATING
COMMISSION, an agency of the Ex-
ecutive Branch, and Ana Cristina
Martinez, in her official capacity as
Chair of the First District Court of
Appeal Judicial Nominating Commis-
sion, Appellees.**

No. 1D01-3484.

District Court of Appeal of Florida,
First District.

July 16, 2002.

Coalition brought action seeking certain records from Judicial Nominating Commission (JNC) and its chairwoman. The Circuit Court, Leon County, L. Ralph Smith, J., dismissed. Coalition appealed. The District Court of Appeal, Wolf, J., held that: (1) vote sheets, ballots, and tally sheets created prior to and during candidate interviews by JNC members were part of deliberations, and thus, were specifically exempted by State Constitution from public exposure; (2) JNC members'

notes were not public records; (3) coalition had burden to request in camera review of documents; and (4) in camera review was not necessary.

Affirmed.

1. Records ⇌30

Vote sheets, ballots, and tally sheets created prior to and during candidate interviews by members of Judicial Nominating Commission (JNC) were part of members' deliberations, and as such, were specifically exempted by State Constitution from public exposure. West's F.S.A. Const. Art. 1, § 24; Art. 5, § 11(d).

2. Records ⇌30

Judicial Nominating Commission members' notes made prior to and during candidate interviews were not public records. West's F.S.A. Const. Art. 1, § 24; Art. 5, § 11(d).

3. Records ⇌51

Judicial Nominating Commission is not an agency subject to public records act. West's F.S.A. § 119.011(2).

4. Records ⇌51

Constitutional officers do not generally fall under public records act's definition of agency. West's F.S.A. § 119.011(2).

5. Records ⇌30

Although the legislature and the supreme court have the power to repeal procedures enacted by Judicial Nominating Commission (JNC) under power vested by State Constitution, they have no power to enact procedures requiring record retention beyond that already imposed by the JNC rules of procedure. West's F.S.A. Const. Art. 5, § 11(d).

6. Records ⇌30

A court cannot amend the Judicial Nominating Commission (JNC) rules to

require that the JNC keep a record retention schedule, privilege log, or accounting of all documents not retained.

7. Constitutional Law ⇌14

In construing a constitutional provision, the starting point must be the language employed in the provision.

8. Constitutional Law ⇌14

In construing a constitutional provision, the words should be given reasonable meaning according to the subject matter and in the framework of modern societal usage and grammatical structure.

9. Constitutional Law ⇌13

Court of Appeal must use common sense in construing the true intent of a constitutional provision.

10. Constitutional Law ⇌13

Intention of constitutional provision can be ascertained by determining the evil sought to be prevented or remedied in initiating enactment of the provision.

11. Records ⇌30

Notes by individual members of Judicial Nominating Commission are not public record. West's F.S.A. Const. Art. 1, § 24; Art. 5, § 11(d).

12. Records ⇌34

Coalition which sought public disclosure of Judicial Nominating Commission members' vote sheets, ballots, tally sheets, and notes had the burden of requesting an in camera inspection of such documents.

13. Records ⇌34

In camera inspection of Judicial Nominating Commission members' vote sheets, ballots, tally sheets, and notes to determine whether such documents constituted public records was not necessary, as such notes never reached the status of public records and the remaining requested items were excluded under the deliberation pro-

cess exception of the State Constitution. West's F.S.A. Const. Art. 5, § 11(d).

Peter Antonacci and Chanta G. Combs of Gray, Harris & Robinson, P.A., Tallahassee, for Appellants.

Carl R. Pennington, Jr. of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., Tallahassee, for Appellees.

WOLF, J.

Appellants, The Justice Coalition and Ted Hires (collectively referred to as "the Coalition"), are appealing from a final order dismissing their action seeking certain records from the appellees, The First District Court of Appeal Judicial Nominating Commission and Ana Cristina Martinez in her official capacity as chair of the nominating commission (collectively referred to as "the JNC"). Specifically, the Coalition sought vote sheets, ballots, tally sheets, and members' notes. We essentially have two issues in front of us: 1) whether the documents sought by appellants were subject to public disclosure pursuant to the state constitution, and 2) whether the JNC was required to comply with the requirements of chapter 119, Florida Statutes. We hold that none of the documents sought are subject to public disclosure. The vote sheets, ballots, and tally sheets are an essential part of the deliberation process exempted from disclosure pursuant to article V, section 11(d). Members' individual notes are not records or proceedings of the nominating commission. We also determine that judicial nominating commissions are not subject to chapter 119, Florida Statutes, and therefore, they do not have to adopt a retention schedule for the requested items. We, therefore, affirm the decision of the trial court.

Appellants made a public records request to the JNC through Ana Cristina Martinez, the Chairwoman, and Elizabeth White, a member. White produced several documents in response to the public records request, but specifically refused to produce her personal notes made during the deliberation process. Likewise, Martinez produced several documents, but she refused to produce JNC members' personal notes and vote sheets made during the deliberation process.

On February 28, 2001, the Coalition filed suit against the JNC and Martinez, in her official capacity as the JNC's Chairwoman. Specifically, the complaint alleged that the JNC is an agency in the executive branch of state government, that JNC members took notes during their investigations of the applicants' background and "used these notes as a basis to eliminate certain applications and block those applicants from further consideration by the JNC," and that the JNC failed to promulgate a record retention schedule. The documents specifically requested in the complaint were "members['] notes made prior to and during candidate interviews, vote sheets, ballots and ballot tally sheets" used by the JNC in consideration of judicial candidates.¹

On July 23, 2001, the trial court issued its order dismissing the Coalition's complaint with prejudice, specifically ruling as follows:

1. Chapter 119, Florida Statutes (2000), does not apply to the JNC and Martinez.
2. The documents sought by the Coalition, including the notes of individual JNC members, do not constitute public records.
3. The requested records constitute an integral part of the deliberations of

the commission and are, therefore, expressly exempted by the Constitution.

4. Disclosure of the records would publicize the JNC's ranking of the nominees, thereby contravening the JNC's rules of procedure.
5. The Coalition does not have a clear legal right to compel performance of a legal duty, thereby rendering its requests for mandamus relief moot.

[1, 2] The Florida Constitution addresses the right to access public records of the JNC in two separate sections: article I, section 24, and article V, section 11. In article I, section 24, *Access to public records and meetings*, the Constitution generally affords the broad right to inspect any non-exempt public record created or received in official state business:

(a) Every person has the right to *inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.* This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Art. I, § 24, Fla. Const. (emphasis added). More specifically, article V, section 11, *Vacancies*, establishes the JNC as an independent entity, not governed by any one branch of government. Additionally, it provides public access to all proceedings

1. Appellants were given an opportunity to

amend their complaint but declined to do so.

and records with an exception for “deliberations”:

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. *Except for deliberations* of the judicial nominating commissions, the proceedings of the commissions and *their records shall be open to the public.*

Art. V, § 11(d), Fla. Const. (emphasis added).

While article I, section 24, and article V, section 11 of the Florida Constitution are applicable to our inquiry, chapter 119, Florida Statutes is not.

[3] The JNC is not an agency subject to chapter 119. Section 119.011(2) defines “agency” as:

[A]ny state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established *by law* including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(Emphasis added.)

[4] Constitutional officers do not generally fall under the chapter 119 definition of “agency.” See *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla.1995) (holding that

clerks of circuit courts, when acting under their article V powers, are not subject to chapter 119); *Locke v. Hawkes*, 595 So.2d 32 (Fla.1992) (holding that legislature is not subject to chapter 119). In *Locke v. Hawkes*, the supreme court concluded that chapter 119 applied only to agencies subject to legislative control, which did not include the legislature itself or the judiciary. *Id.* at 36. Specifically, the supreme court held,

We find that the definition of agency in section 119.011, while not intended to apply to the legislature . . . applies particularly to those entities over which the legislature has some means of legislative control, including counties, municipalities, and school boards, and state agencies, bureaus, and commissions, and private business entities working for any of these public entities and officials.

Id. Thereafter, in 1993, article I, section 24 of the Florida Constitution was amended to include the three branches of government; however, all previous exemptions, including that in article V, section 11(d), were still in place. Art. I, § 24(d), Fla. Const. Moreover, section 119.011(2) was not amended to include the judiciary, the legislature, or independent constitutional entities. Rather, these entities adopted their own rules for public records. See, e.g., Fla. R. of Jud. Admin. 2.051 (providing public access to judicial records which are not exempted); Fla. Dist. Ct. Jud. Nominating Comm’n R., § X (requiring the JNC to retain and submit under seal specific papers to Florida Bar or Governor).

[5, 6] Unlike the other constitutional entities mentioned in section 119.011, the Florida Constitution requires the JNC to enact its own procedures: “Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system.” Art. V,

IN RE ADVISORY OPINION TO THE GOVERNOR Fla. 1205

Cite as 551 So.2d 1205 (Fla. 1989)

disagree with the majority not because I differ from its legal or philosophical conclusion on an adult woman's right of privacy and her right to make a personalized and unimpeded decision on whether to terminate a pregnancy. I have no problem in embracing the rationale of *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), particularly when this state has adopted a constitutional right of privacy. I agree with the majority's discussion of this as it relates to adults. In short, if this case were on the subject of a legislative intrusion on an adult woman's right to have an abortion, I would concur.²

My principal disagreement lies in my conclusion that, absent an enabling statute, a minor does not have the capacity to consent to an abortion. This is because of the common law and long-recognized disability of minors because of nonage. A minor lacks the capacity to contract. When she consents to an abortion she contracts with another person to perform a surgical procedure on her. Absent parental or statutory authorization, she cannot do this. A minor's incapacity was recognized by the legislature when it enacted section 743.065, Florida Statutes (1987), authorizing the power to consent for certain medical procedures.³ The legislature chose to exclude its grant of consent power to abortion medical procedures. It did the same in section 743.066, Florida Statutes (1989). Even if we question the wisdom of the legislature, the judiciary does not have the power to extend the capacity to consent by a minor beyond that granted by the legislature.⁴ I do not look upon § 390.001(4)(a) as an invasion of privacy, but rather a method of providing a vehicle to fulfill a pregnant minor's desire to terminate a pregnancy. Viewed in that light, the statute is constitutional.

2. I neither concur nor reject the majority opinion's definition of the viability of a fetus. This discussion is not relevant in determining whether section 390.001(4)(a)(1), Fla.Stat. (Supp. 1988), is constitutional. The conclusions announced by the majority are not predicated on any facts in this case and should not be addressed.

I do not believe any procedural deficiencies in the statute make it unconstitutional. Procedure is the responsibility of this Court. We have provided a procedural rule to accompany the statute. If additional procedural safeguards are indicated, we can provide those. The statute need not die on this basis.

Some judges may not like to make the ultimate decision to grant or deny a consent for an abortion when he or she finds that a minor is so immature she cannot competently do so herself. It may be a hard decision, but dislike and hardship do not translate into unconstitutionality. It is the duty of judges to make hard decisions. That is one reason we have them.

In conclusion, I find the statute both permissive and constitutional. I do not believe it trespasses upon a minor's right of privacy. For many purposes, minors are treated differently. It does not offend me in the slightest that their ability to consent to an abortion is different from adults and is an issue appropriately left with the legislature.



In re ADVISORY OPINION TO THE GOVERNOR.

No. 74930.

Supreme Court of Florida.

Nov. 9, 1989.

Questions were propounded by the Governor to the Justices of the Supreme Court relating to Governor's executive

3. The disability of nonage is also recognized in art. III, § 11(a)(17), Fla. Const.

4. It appears to me that any person performing an abortion on a minor without a statutorily authorized or parental consent is guilty of committing a battery and is subject to both civil and criminal penalties.

powers and duties under constitutional article governing filling of vacancies in judicial office. The Justices of the Supreme Court were of the opinion that: (1) where there were three vacancies in judicial office, the judicial nominating commission must submit the names of nine nominees, three for each vacancy, and (2) Governor was not required to fill the three vacancies until the commission had submitted the nine names.

Questions answered.

1. Judges ⇄8

Judicial nominating commission is required to submit to Governor three names for each vacancy in judicial office so that Governor can perform his duty of appointment; where there are three vacancies, the commission must submit the names of nine nominees, three for each vacancy. West's F.S.A. Const. Art. 4, § 1(c); Art. 5, § 11.

2. Judges ⇄8

Governor is not required to fill three vacancies from the nominations of a single nominating commission until the commission has submitted nine names, three for each vacancy, and the 60-day time limitation for making the appointments does not begin to run until commission has submitted the nine names. West's F.S.A. Const. Art. 4, § 1(c); Art. 5, § 11.

Peter M. Dunbar, Gen. Counsel, Tallahassee, for Bob Martinez, Governor of the State of Fla.

Honorable Bob Martinez

Governor of Florida

The Capitol

Tallahassee, Florida 32301

Dear Governor Martinez:

We have the honor of responding to your request for our opinion as to the interpretation of a constitutional provision affecting your executive powers and duties. Your request was made and our opinion is provided as authorized by article IV, section 1(c) of the Florida Constitution.

Your letter requesting our opinion, omitting the formal parts, reads as follows:

"Pursuant to Article IV, Section 1(c) of the Constitution of the State of Florida, your opinion is requested as to the interpretation of my executive duties and responsibilities as chief executive under Article V, Section 11 of the Constitution of the State of Florida. This Court has previously determined that such a request is within the purview of Article IV, Section 1(c) of the Florida Constitution, by responding to a similar request. *In re Advisory Opinion to the Governor*, 276 So.2d 25 (Fla.1973).

"It is my constitutional duty to fill by appointment vacancies in judicial office. Section 11 of Article V of the Florida Constitution provides:

(a) The governor shall fill each vacancy on the supreme court or on a district court of appeal by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of three persons nominated by the appropriate judicial nominating commission.

(b) The Governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts with-

IN RE ADVISORY OPINION TO THE GOVERNOR Fla. 1207

Cite as 551 So.2d 1205 (Fla. 1989)

in the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

"The language of the provision confers upon the Governor the authority to make judicial appointments. Additionally, the language provides that the appropriate judicial nominating commission nominate not fewer than three persons for each judicial vacancy from whom the Governor shall make his appointment.

"Since I assumed the office of governor in 1987, numerous judicial vacancies have occurred, and I have performed my constitutional duty of appointment on 119 occasions. On each of these occasions, the appropriate judicial nominating commission, except the Fifteenth Judicial Nominating Commission, has provided me with the names of three persons for each judicial vacancy. On August 29, 1989, the Fifteenth Judicial Nominating Commission nominated the six same persons for each of three judicial vacancies. The Commission's action appears to contravene the requirements of Article V, Section 11, and results in substantially diminishing my authority to make judicial appointments by reducing the number of nominees from which I may select.

"I have raised my concerns with the Chairman of the Fifteenth Judicial Nominating Commission and with the Judicial Nominating Commission Procedures Committee which, in response, adopted the following motion:

Although the JNC's are autonomous and can create their own rules, it is our interpretation that sending the six same names for each of the three positions complies with the Uniform Rules of Procedures for Circuit Judicial Nominating Commissions.

"I can find no provision in the *Uniform Rules of Procedure for Circuit Court Judicial Nominating Commissions* that permits judicial nominating commissions, when there are three judicial vacancies, to provide me with the names of six nominees rather than the names of nine nominees as required by the Florida Constitution. Like the constitutional provision, the rules provide that the judicial nominating procedure begins upon the occurrence of "a vacancy," and results in "no less than three nominees from the list of applicants who meet the requirement of the Florida Constitution and other legal requirements for the judicial office." Section V., *Uniform Rules of Procedure for Circuit Judicial Nominating Commissions*. In any event, it is clearly impermissible for judicial nominating commissions to interpret the rules in a manner which conflicts with the requirements of Article V, Section 11.

"In view of the provisions of the Constitution which I have heretofore related and the refusal of the Fifteenth Circuit Judicial Nominating Commission to provide me with the names of additional nominees, I am in doubt as to whether I, as Governor, must fill the three vacancies in the fifteenth judicial circuit court from the six same names provided to me by the Fifteenth Circuit Judicial Nominating Commission and, if not, what action I must take to faithfully perform my constitutional duty to fill by appointment the vacancies in these judicial offices. I have the honor, therefore, to request your written opinion on the following questions.

- (1) Is the governor required to fill vacancies in judicial office from the names of persons provided to him by the appropriate judicial nominating commission, if the judicial nominating commission provides him with the six same names for three judicial vacancies rather than not fewer than three persons for each judicial vacancy?
- (2) If the answer to questions (1) is in the negative, must the governor reject the entire six names provided to him

by the appropriate judicial nominating commission, make only two appointments and request that three additional names be provided for the third vacancy, or take other appropriate action as directed by this Court?"

We now proceed to address your questions.

As is required by Florida Rule of Appellate Procedure 9.500(b), we determined that your request was within the purview of article IV, section 1(c). On October 26, 1989, the Chief Justice sent you a preliminary response to your request, advising you of the opinion of the Justices on your questions and advising you that a formal written opinion would follow. The Chief Justice's letter to you, omitting the formal parts, reads as follows:

"This is in response to your letter received this date requesting an advisory opinion from the Supreme Court pursuant to Article IV, Section 1(c) of the Florida Constitution.

"Based on the need to resolve your questions expeditiously, the court has decided, as authorized by Article IV, Section 1(c), to dispense with hearing from interested persons and to provide our answers without delay.

"The questions upon which you have requested our opinion are as follows:

(1) Is the governor required to fill vacancies in judicial office from the names of persons provided to him by the appropriate judicial nominating commission, if the judicial nominating commission provides him with the six same names for three judicial vacancies rather than not fewer than three persons for each judicial vacancy?

(2) If the answer to question (1) is in the negative, must the governor reject the entire six names provided to him by the appropriate judicial nominating commission, make only two appointments and request that three additional names be provided for the third vacancy, or take other appropriate action as directed by this Court?

"With regard to question (1), the Court answers in the negative and advises you

that, in the case of three vacancies, the constitution and applicable statutes and rules contemplate that there will be nine nominees submitted, three for each vacancy.

"With regard to question (2), the Court advises you that, in the event of three vacancies to be filled from the nominations of a single nominating commission, the Governor need not make any appointments until the commission has submitted nine names, three nominees for each vacancy.

"The Court will issue a formal advisory opinion on your questions within the next week or so. But the Court has authorized me to advise you of our opinion on your questions in the foregoing fashion due to the extreme time constraints under which we are operating."

On October 25, 1989, the Judicial Nominating Commission for the Fifteenth Judicial Circuit filed with us a petition for a writ of mandamus, seeking to have us require that you make appointments for three circuit court vacancies from among six nominees submitted to you.

In its petition, the nominating commission pointed out that the Uniform Rules of Procedure for Judicial Nominating Commissions requires nominating commissions to select nominees by majority vote. In this case, the commission said, only six nominees had received majority approval for their nominations. The commission also argued that by nominating six persons, the commission had complied with the language of article V, section 11 and of the uniform rules, mandating the nomination of at least three persons. The fact that there were three vacancies made no difference, the commission argued, because "[a]fter filling the first vacancy, the Governor will have five nominees from which to fill the second vacancy, and then four nominees from which to fill the third vacancy." The commission argued that, based on the foregoing facts, it was your duty to make the appointments from among the six nominees. We denied the petition, thus implicitly rejecting the commission's view. *Judicial Nominating Commission for the Fif-*

STATE v. PARKER

Cite as 551 So.2d 1209 (Fla. 1989)

Fla. 1209

teenth Judicial Circuit v. Martinez, No. 74,905 (Fla. Oct. 26, 1989).

Having considered the commission's mandamus petition, we were familiar with the commission's position and the arguments in support of it when your request for an advisory opinion arrived on October 26. We were also aware of the public need to fill the judicial vacancies in a timely fashion. With the benefit of the legal arguments presented in the petition for mandamus and the suggested position advanced in your letter, we felt we were fully advised in the premises of this issue. We accordingly concluded, in view of the time constraints, that it would be appropriate for us to respond to your request without delay and without further briefing by interested persons. This expedited procedure is authorized by article IV, section 1(c), if, in the Court's judgment, "the delay would cause public injury."

[1] As is pointed out in your request, article V, section 11(b) provides, with respect to "each vacancy," that the Governor is to appoint "one of not fewer than three persons nominated by the appropriate judicial nominating commission." The constitutional language thus clearly requires that the nominating commission submit three nominees for each vacancy. There is no need to determine whether the rules of the nominating commission, properly interpreted, authorize a different procedure because it is beyond question that no such rule can prevail over the clear, unambiguous language of the constitution.

[2] We therefore confirm and ratify the informally provided answers previously given to you in the Chief Justice's letter of October 26, 1989, and advise you as follows: With regard to question (1), it is our opinion that the constitution requires the nominating commission to submit three names for each vacancy. With regard to question (2), without venturing to advise you as to your course of action, the Court advises you that, in the case of three vacancies to be filled from the nominations of a single nominating commission, you need not make any appointments until the commission has submitted nine names, three

for each vacancy, and that the sixty-day time limitation for making the appointments does not begin to run until the commission has submitted nine names.

Very respectfully,
Raymond Ehrlich
Chief Justice
Ben F. Overton
Parker Lee McDonald
Leander J. Shaw
Stephen H. Grimes
Justices

ROSEMARY BARKETT and
GERALD KOGAN, JJ., did not
participate in this decision.



STATE of Florida, Petitioner,

v.

Lloyd Randolph PARKER, et al.,
Respondents.

No. 73140.

Supreme Court of Florida.

Nov. 16, 1989.

Application for Review of the Decision of the District Court of Appeal—Certified Great Public Importance Second District—Case Nos. 86-2296, 86-2443, 86-2510, 86-2596, 86-2597 and 87-312 (Collier).

Robert A. Butterworth, Atty. Gen., and Charles Corces, Jr., Asst. Atty. Gen., Tampa, for petitioner.

James Marion Moorman, Public Defender, and Deborah K. Brueckheimer and Stephen Krossschell, Asst. Public Defenders, Bartow, for respondents.

PER CURIAM.

We review *Parker v. State*, 530 So.2d 344 (Fla. 2d DCA 1989), to answer a previously certified question of great public im-

The standards of American Law Institute¹ should be adopted.

The opinion filed herein by ERVIN, J., should be adopted.

ERVIN, J., concurs.

DEKLE, Judge (dissenting).

Under the coldblooded facts in this case which demonstrate a clear, calculated and deliberate killing, there was no error in my view in the charges or judgment.

I would affirm. I agree that the M'Naghten Rule should be retained.



In re ADVISORY OPINION TO the GOVERNOR.

No. 43434.

Supreme Court of Florida.

April 3, 1973.

Questions were propounded by the Governor to the Justices of the Supreme Court relating to the Governor's executive powers and duties under revised constitutional article governing filling of vacancies in judicial office. The Justices of the Supreme Court were of the opinion that the judicial nominating commissions are a part of the executive branch of the government performing an executive function which cannot be limited by legislative act. In addition, the Justices were of the opinion that Governor had no power to establish

1. "(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [or wrongfulness] of his conduct or to conform his conduct to the requirements of law.

rules governing the operation of the commissions. Furthermore, the Justices were of the opinion that the power and duty for promulgating rules for the commissions rests with the members of the commissions and that such rules are not required to be uniform throughout the state.

Questions answered.

1. Constitutional Law ⇐14, 16

In construing a constitutional provision, the words should be given reasonable meaning according to the subject matter, but in the framework of contemporary societal needs and structures; such light may be gained from historical precedence, from present facts, or from common sense; further light may be shared by examination of the purpose the provision was intended to accomplish or the evils sought to be prevented or remedied.

2. Constitutional Law ⇐58

Judges ⇐3

Under the merit system for selecting nominees for judicial appointment the appointment of a judge is an executive function and the screening of applicants which results in the nomination of those qualified is also an executive function; once the judicial nominating commissions have been established by the legislature they became a part of the executive branch of the government; thus, the function of the commissions being inherently an executive function such function cannot be limited by legislative action. F.S.A.Const. art. 4, § 1(c); art. 5, §§ 11, 11(b), 20(c)(5-7); F.S.A. § 43.29.

3. Judges ⇐8

Resignations under the Resign to Run Law or under similar circumstances do not

"(2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct." Model Penal Code § 4.01 (Tent.Draft No. 4, 1955).

create a vacancy which activates the duties of the judicial nominating commissions or empower the Governor to make direct appointments. F.S.A.Const. art. 5, § 11(a, b); F.S.A. §§ 43.29, 99.012.

4. Judges ⇄3

The Governor does not have inherent or implied power to establish rules governing operation of judicial nominating commission; purpose of such commissions is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge; to allow the Governor to guide the deliberations of the commission by imposing rules of procedure could destroy its constitutional independence; however, the Governor is not precluded from making recommendations concerning rules. F.S.A.Const. art. 4, § 1(c); art. 5, § 11.

5. Constitutional Law ⇄50

Preservation of inherent powers of the three branches of government, free of encroachment or infringement by one on the other, is essential to the effective operation of our constitutional system of government; this doctrine is designed to avoid excessive concentration of power in the hands of one branch. F.S.A.Const. art. 2, § 3.

6. Judges ⇄3

Power and duty for promulgating rules for judicial nominating commissions rests with the members of the commissions. F.S.A.Const. art. 4, § 1(c); art. 5, §§ 10(a), 11, 11(b), 20(c)(5-7); F.S.A. § 43.29.

7. Judges ⇄3

Rules governing operation of the judicial nominating commissions need not be uniform throughout the state. F.S.A.Const. art. 4, § 1(c); art. 5, §§ 10(a), 11, 11(b), 20(c)(5-7); F.S.A. § 43.29.

Tallahassee, for Governor Reubin O'D. Askew.

Talbot D'Alemberte, Miami, as amicus curiae.

PER CURIAM.

Honorable Reubin O'D. Askew
Governor of Florida
The Capitol
Tallahassee, Florida 32304

Dear Governor:

We have the honor to acknowledge your communication of February 26, 1973, requesting our opinion upon a question affecting your executive powers and duties as authorized by Section 1(c) of Article IV, Florida Constitution (F.S.A.).

Omitting the formal parts, your letter reads as follows:

"It is my constitutional duty to fill by appointment vacancies in judicial office. Section 11 of Article V (Revised) of the Florida Constitution, 1968 Revision, provides:

"(a) The governor shall fill each vacancy in judicial office by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term. The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor must make the appointment within sixty days after the nominations have been certified to him.

"(b) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit.

Edgar M. Dunn, Jr., Gen. Counsel, and
Robert T. Mounts, Asst. Gen. Counsel,

"In accordance with Section 11(b) above, separate judicial nominating commissions have been established by general law (Chapter 72-404, Laws of Florida; Section 43.29, Florida Statutes, 1972 Supplement, F.S.A.) in conformance with Section 20(c)(5)-(7) of Article V (Revised), which provides as follows:

"(c)(5) Each judicial nominating commission shall be composed of the following:

"a. Three members appointed by the Board of Governors of the Florida Bar from among the Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, district or circuit;

"b. Three electors who reside in the territorial jurisdiction of the court or circuit appointed by the governor; and

"c. Three electors who reside in the territorial jurisdiction of the court or circuit and who are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

"(6) No justice or judge shall be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. No member shall be eligible for appointment to state judicial office so long as he is a member of a judicial nominating commission and for a period of two years thereafter. All acts of a judicial nominating commission shall be made with a concurrence of a majority of its members.

"(7) The members of a judicial nominating commission shall serve for a term of four years except the terms of the initial members of the judicial nominating commissions shall expire as follows:

"(a) The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1974;

"(b) The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1975;

"(c) The terms of one member of category a. b. and c. in subsection (c)(5) hereof shall expire on July 1, 1976.

"In accordance with subsection (c)(5) above, it is my constitutional duty to appoint three electors who reside in the territorial jurisdiction of the court or circuit to serve as members of each judicial nominating commission. It is also my constitutional duty to commission each member of the judicial nominating commissions, regardless of the appointing authority. Section 1(a), Article IV, of the Florida Constitution, 1968 Revision, provides in part:

"(a) . . . [The Governor] shall take care that the laws be faithfully executed, *commission all officers of the state and counties. . . .*' (Emphasis theirs)

"Prior to the effective date of the revised Article V (January 1, 1973), the power to fill by appointment vacancies in judicial office was vested exclusively in the Governor without limitation, pursuant to Section 1(f) of Article IV and Section 14 of the old Article V, of the Florida Constitution; these sections provide:

"[Section 1(f)] When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

"[Section 14] Vacancies in office of judge, how filled.—When the office of any judge shall become vacant from any cause, the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement, or other cause created such vacancy.

"In addition, Section 10, of the old Article V, provided in part:

" . . . [I]n event of vacancy in the office of County Solicitor, Clerk or other officer of the Court of Record in and for Escambia County, Florida, from any cause, the successor to fill such vacancy shall be appointed by the Governor to serve for the unexpired term of such office which has become vacant.

"The two provisions of the old Article V set forth above were adopted, in 1956, as part of the Florida Constitution of 1885. Section 7, Article IV, of the Florida Constitution of 1885, provided as follows:

"Section 7. Vacancies in office; appointments.—When any office, from any cause, shall become vacant, and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term.

"It was apparent to me upon assuming office that the power to fill vacancies in judicial offices by appointment was historically and constitutionally vested in the Governor as an executive function. While the previous constitutional scheme had produced many able and qualified members of the judiciary, it was apparent to all who had studied the method of judicial selection in Florida that improvements in the Florida Constitutional scheme could be made.

"Accordingly, your judicial notice is requested of the fact that by Executive Order Number 71-40A, dated July 23, 1971, I established judicial nominating councils and provided rules for their operation. These councils operated successfully under these rules until the effective date of the revised Article V, and were of material assistance to me in the exercise of the power of appointment. In large part, the experience and membership of the judicial nominating councils have now been carried over to the judicial nominating commissions which have been elevated to constitutional status.

"It has come to my attention that there is some doubt on the part of those serving on the newly established commissions, as to rules governing their operation, because the previous executive order governing the operation of the councils is no longer applicable. There does not appear to be any express provision in the present Florida Constitution directly relating to this question.

"In view of the provisions of the Constitution which I have heretofore related, I am in doubt as to whether I, as Governor, have the authority to prescribe uniform rules governing the operation of the judicial nominating commissions. I have the honor, therefore, to request your written opinion on the following questions:

"(1) Is the function of the judicial nominating commissions an executive function, which cannot be limited by legislative act?

"(2) If the answer to the question above is in the affirmative, does the Governor have the inherent or implied power to establish rules governing the operation of the nominating commissions, consistent with applicable provisions of the Florida Constitution?

"(3) If the answer to question number (1) is in the affirmative, but the answer to question number (2) is in the negative, do the judicial nominating commissions have inherent or implied power to make rules governing their operation, consistent with applicable provisions of the Florida Constitution?

"(4) If the answer to question number (3) is in the affirmative, is there any requirement that the rules be uniform throughout the state?"

In answering the first question, we should first review the history of Fla.Const. Art. V, § 11, F.S.A.

In the deliberations of the Florida Constitutional Revision Commission, it was proposed that judicial nominating commissions

be created to screen applicants for judicial appointments within their respective jurisdictions and to nominate the three best qualified persons to the Governor for his appointment. The commissions were to be an arm of the executive appointive power to supplant, at least in part, the Governor's so-called "patronage committee" composed of political supporters, to insure that politics would not be the only criteria in the selection of judges, and to increase generally the efficiency of the judicial appointive process. Working Papers, Fla. Const. Rev. Comm., Vol. XI, p. 169, et seq. (Minutes on Amendment No. 164, December 12, 1966).

By Executive Order 71-40A, on July 23, 1971, you established judicial nominating councils and prescribed rules for their operation. The stated objectives of this action included the premise that only the most qualified, conscientious and dedicated persons should be appointed to serve as judicial officers. In describing the nature and purpose of these nominating councils, the executive order stated that the high quality of the judiciary could best be maintained by using:

" . . . in aid of the constitutional discretion reposed in the Governor, a non-partisan advisory council on judicial selection, composed of outstanding representatives of The Florida Bar and the public in general, to nominate those eligible persons who are found to be most qualified to serve the public as judicial officers." Executive Order 71-40A, supra.

At the time the executive order was issued, there was no statute governing the process through which the Governor made appointments to the judiciary. Indeed, under the provisions of the existing Fla. Const., art. IV, § 1(f), and § 7, and Art. V, § 14, (1885), F.S.A., the Legislature could not have enacted laws on the subject area of the executive order. See *Westlake v. Merritt*, 85 Fla. 28, 95 So. 662 (1923). This was an executive function, pure and simple, and limitations could not be placed on that executive function.

[1] In construing a constitutional provision, the words should be given reasonable meanings according to the subject matter, but in the framework of contemporary societal needs and structure. Such light may be gained from historical precedent, from present facts, or from common sense. *State ex rel. West v. Gray*, 74 So.2d 114, p. 116 (Fla.1954). Further light may be shared by examination of the purpose the provisions was intended to accomplish or the evils sought to be prevented or remedied. *Amos v. Mathews*, 99 Fla. 1, 126 So. 308 (1930).

It was upon this background and experience that the merit system for selecting nominees for judicial appointment gained popular and constitutional acceptance. The Revised Article V of the Florida Constitution, which took effect January 1, 1973, established a judicial selection system substantially as instituted by you under your Executive Order 71-40A. However, the judicial nominating commissions are elevated to constitutional stature and permanence. The process of non-partisan selection has been strengthened even further because nominations made by the judicial nominating commissions have now been made binding upon the Governor, as he is under a constitutional mandate to appoint "one of not fewer than three persons nominated by the appropriate judicial nominating commission." Moreover, the Governor must make the appointment within sixty days after the nominations have been certified to him. Fla.Const., art. V (Rev.), § 11(a), F.S.A. However, this same provision confers upon the Governor the express power to make the final and ultimate selection by appointment.

[2] The appointment of a judge is an executive function and the screening of applicants which results in the nomination of those qualified is also an executive function. It is the prerogative of the Legislature to provide for the number of persons to serve on each judicial nominating commission and the method of their selection. Once the judicial nominating commissions have been established by the Legislature

they become a part of the executive branch of government. The function of the commissions being inherently an executive function, such cannot be limited by legislative action.

[3] The legislative role in the appointment of judges has been completed with the enactment of Fla.Stat. § 43.29, F.S.A., which authorizes the commissions in accordance with the requirements of Fla. Const., art. V, § 11(b), F.S.A. Of course, resignations under Fla.Stat. § 99.012, F.S.A. (Resign to Run Law) or under similar circumstances do not create a vacancy which activates the duties of the commissions or empower the Governor to make direct appointments.

[4,5] Your second question is answered in the negative. The purpose of the judicial nominating commission is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge. When the commission has completed its investigation and reached a conclusion, the persons meeting the qualifications are nominated. In this respect the commissioners act in an advisory capacity to aid the Governor in the conscientious exercise of his executive appointive power.

The preservation of the inherent powers of the three branches of government, free of encroachment or infringement by one upon the other, is essential to the effective operation of our constitutional system of government. See Fla.Const. art. II, § 3, F.S.A. This doctrine is designed to avoid excessive concentration of power in the hands of one branch. *Simmons v. State*, 160 Fla. 626, 36 So.2d 207 (Fla.1948); *Sylvester v. Tindall*, 154 Fla. 663, 18 So.2d 892 (1944); *Sheffey v. Futch*, 250 So.2d 907 (Fla.App. 4th, 1971); *State v. Barquet*, 262 So.2d 431 (Fla.1972). As a corollary to the doctrine of separation of powers, the executive branch under the Florida Constitution is empowered to fill by appointment vacancies in judicial office. Fla.Const., art. V (Rev.), § 11(a), F.S.A.

This appointive power is diluted by the Constitution to the extent that a nomination must be made by the appropriate commission, unrestrained by the influence of the Governor. To allow the Governor to guide the deliberations of the commissions by imposing rules of procedure could destroy its constitutional independence. This does not preclude him from making recommendations concerning rules.

Seeking to remove some of the discretion of the Governor's office in the appointment of judicial officers is an apparent goal of the people which can best be attained by providing discretion to their commissions to promulgate rules of procedure for their hearings and findings, independent of any of the three standard recognized divisions of state government. While the function of the commissions is inherently executive in nature, the mandate for the commissions comes from the people and the Constitution, not from the Legislature, the Governor, or the Courts.

[6] Thus, the answer to your third question must be in the affirmative. The power and duty for promulgating rules for the commissions must rest with the members of the commissions. To serve the purposes sought by the people, it is necessary that the commissions remain independent. As the ultimate choice of judges is left to the people through the electoral process (Fla. Const., art. V, § 10(a), F.S.A.), the people have chosen to have a voice in the choice of interim judges, appointed to fill out unexpired terms.

[7] The fourth and final question which you have raised must be answered in the negative. There is nothing in the constitutional mandate creating these commissions that requires uniformity of procedure among the various commissions.

In summary, the judicial nominating commissions are a part of the executive branch of government performing an executive function which cannot be limited by legislative act. The Governor has no power to establish rules governing the operation

of the nominating commissions, as the exercise of such a power might tend to curtail the constitutional independence of the commissions. The power and duty for promulgating rules for the commissions must rest with the members of the commissions. These rules, for the various commissions, are not required to be uniform throughout the state.

Very respectfully,

VASSAR B. CARLTON
Chief Justice

B. K. ROBERTS

RICHARD W. ERVIN

JAMES C. ADKINS

JOSEPH A. BOYD

DAVID L. McCAIN

HAL P. DEKLE,
Justices



AUTO OWNERS INSURANCE COMPANY, Petitioners,

v.

Jennie Bell WEST et al., Respondents.

No. 42407.

Supreme Court of Florida.

April 4, 1973.

Action was brought for injuries which resulted from automobile accident and the insurer of defendant automobile owner answered denying liability. The Circuit Court for Dade County, Henry L. Balaban, J., denied insurer's motion for summary judgment and the insurer appealed. The District Court of Appeal, 260 So.2d 534, affirmed and certiorari was granted. The

Supreme Court, Carlton, C. J., held that failure of automobile liability insurer to respond to an SR-21 form, a self-serving form used by car owners involved in accident to notify financial responsibility division of insurance coverage, did not estop insurer from denying coverage with respect to accident.

Decision of District Court quashed with directions to remand cause to trial court.

For decision after remand, see 278 So. 2d 671.

Insurance ⇨390

Failure of automobile liability insurer to respond to an SR-21 form, a self-serving notice used by car owners involved in accident to notify financial responsibility division of insurance coverage, did not estop insurer from denying coverage with respect to accident. F.S.A. § 324.091.

Jeanne Heyward, and Knight, Peters, Hoeveler, Pickle, Neimoeller & Flynn, Miami, for petitioners.

Robert Orseck of Podhurst, Orseck & Parks, and Fuller, Brumer, Moss & Cohen, Miami, for respondents.

CARLTON, Chief Justice.

We have jurisdiction of this cause, pursuant to Article V, Section 3(b)(3), Florida Constitution, F.S.A., because of a direct conflict between the decision sub judice of the District Court of Appeal, Third District, reported at 260 So.2d 534, and Phoenix Insurance Co. v. McQueen, 240 So.2d 79 (1st D.C.A.Fla.1970).

Jennie Bell West filed an action for damages against the owner of a car with which she was involved in an accident and joined Auto Owners Insurance Co. as a defendant, alleging that Auto Owners at the time of the accident insured the owner of the car for the damages she was claiming. Auto Owners denied that its insurance policy covered the car involved.

Both parties moved for summary judgment on the issue of coverage. The trial

**JUDICIAL NOMINATING
COMMISSION, NINTH
CIRCUIT, Petitioner,**

v.

**Robert GRAHAM, as Governor of the
State of Florida, and George Firestone,
as Secretary of State of the State of
Florida, Respondents.**

No. 62513.

Supreme Court of Florida.

Order Aug. 31, 1982.

Opinion Dec. 16, 1982.

Judicial Nominating Commission sought writ of mandamus directing Governor to use merit selection process to fill judicial vacancies which occurred in August, 1982. The Supreme Court, Overton, J., held that: (1) Commission had standing to seek writ of mandamus to allow it to perform its nominating functions, and (2) Governor properly called for special elections for each of the judicial vacancies since there was sufficient time to schedule a special election during the already scheduled primary and general election dates.

Petition denied.

Adkins, J., concurred in result.

Boyd, J., dissented and filed opinion.

1. Mandamus ⇐ 22

Since nominating commissions are constitutionally created, with independent duties concerning the filling of judicial vacancies, a commission has standing to seek writ of mandamus to allow the commission to perform its nominating function. West's F.S.A. Const. Art. 5, § 11.

2. Judges ⇐ 3

Governor properly called for special elections for each of the judicial vacancies since there was sufficient time to schedule a special election during already scheduled primary and general election dates. West's F.S.A. Const. Art. 5, § 11.

Gregory A. Presnell, as Chairman of and as Counsel for the Ninth Circuit Judicial Nominating Com'n, of Akerman, Senterfitt & Eidson, Orlando, for petitioner.

Betty J. Steffens, Gen. Counsel to the Governor and Arthur R. Wiedinger, Jr., Asst. Gen. Counsel, Tallahassee, and Jim Smith, Atty. Gen., Walter M. Meginniss, Asst. Atty. Gen. and James V. Antista, Legal Counsel for Dept. of State, Tallahassee, for respondents.

Upon consideration of the Petition for Writ of Mandamus and for Injunctive Relief, it is ordered by the Court that said petition be and the same is hereby denied. A full opinion will follow.

ALDERMAN, C.J., and ADKINS, OVERTON, McDONALD and EHRLICH, JJ., concur.

BOYD, J., dissents.

OVERTON, Justice.

The Ninth Circuit Judicial Nominating Commission seeks a writ of mandamus directing the Honorable Robert Graham, Governor of the State of Florida, to use the merit selection process to fill judicial vacancies which occurred in August, 1982. Granting the writ would necessitate a vacation of the governor's order calling a special election to fill those vacancies. We have jurisdiction. Art. V, § 3(b)(8), Fla. Const.

The Court considered this cause as an emergency matter, heard oral argument, and on August 31, 1982, issued an order denying the writ. In our order we advised that our reasons for denial would be expressed in a subsequent written opinion.

In considering the Judicial Nominating Commission's petition for mandamus, we found that the Commission had standing to seek the writ, but determined that the petition should be denied on its merits. We conclude that the constitution mandates an election when there is sufficient time to afford the electorate an opportunity to fill a judicial vacancy.

The facts are uncontroverted. The Honorable Thomas E. Kirkland, Circuit Judge for the Ninth Judicial Circuit, died on August 6, 1982, and the Honorable Richard B. Keating, Circuit Judge for the Ninth Judicial Circuit, died on August 16, 1982. Also on August 16, 1982, the Honorable James Stroker, County Judge for Orange County, created another vacancy by resigning from office effective January 1, 1983, to run for the vacancy in the office of circuit judge created by Judge Kirkland's death. Governor Graham ordered special elections to fill these vacancies. October 5, 1982, the date of the second primary, was set as the date for the first nonpartisan special judicial election, and November 2, 1982, the date of the general election, was set for the second or runoff nonpartisan judicial election. September 3, 1982, was set as the last day for qualifying for the vacancy created by Judge Kirkland's death, and September 7, 1982, was set as the last day for qualifying for the vacancies created by Judge Keating's death and Judge Stroker's resignation.

[1] The governor, in his response to this petition, challenges the standing of the Ninth Circuit Judicial Nominating Commission to bring this action. A nominating commission is a constitutionally established body, mandated by the constitution to submit the nominations of three persons to the governor within thirty days following a judicial vacancy. See art. V, § 11, Fla. Const. We have expressly held that the nominating commissions are part of the executive branch. In so holding, however, we recognized the constitutional independence of the commissions and the requirement that the fulfillment of the commissions' duty be free of the governor's influence. To effect this constitutional intent, we held that the governor may not impose rules of procedure upon the commissions because to do so might destroy the commissions' "constitutional independence." See *In re Advisory Opinion to the Governor*, 276 So.2d 25, 30 (Fla.1973). In that case we concluded that "[w]hile the function of the commissions is inherently executive in nature, the mandate for the commissions comes from the people and the Constitution, not from the Legisla-

ture, the Governor, or the Courts." *Id.* at 30. We hold that since the nominating commissions are constitutionally created, with independent duties concerning the filling of judicial vacancies, a commission has standing to seek a writ of mandamus to allow the commission to perform its nominating function.

On the merits, the question to be determined requires a construction of article V, sections 11(b) and (c), which provide:

(b) The governor shall fill each vacancy on a circuit court or on a county court by *appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election*, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

(Emphasis added.)

These constitutional provisions provide for the use of the merit selection process, but only for a term which ends in January of the year following the next primary and general election. The purpose underlying article V, section 11, is to provide for the election process at the next available primary and general election. In *Spector v. Glisson*, 305 So.2d 777 (Fla.1974), we held that if a judicial vacancy is known reasonably in advance of an intervening primary and general election, the vacancy must be filled by election. The holding in *Glisson* was predicated upon the fact that the constitutional provision was intended to have the election process select members of the judiciary if the electorate had adequate knowledge that a vacancy would occur and that candidates could qualify and run dur-

ing the regularly scheduled primary and general election process. In *In re Advisory Opinion to the Governor, Request of September 6, 1974*, 301 So.2d 4 (Fla.1974), we advised the governor that he need not call a special election and should utilize the merit selection process when knowledge of a vacancy occurred at or after the time of the first primary election. This conclusion was based on the fact that the timing of the vacancy made it impossible to practically afford the electorate an opportunity to fill the vacancy in the 1974 elections. In that instance, we held that the governor could appoint for a term ending in January, 1977, meaning that the office would be subject to the 1976 election process.

[2] In summary, if the vacancy is known in sufficient time to schedule a special election during the already scheduled primary and general election dates, then a special election should be held. On the other hand, if an irrevocable communication of an impending vacancy is presented to the governor at the time of or after the first primary, then we have held there is insufficient time to use the primary and general election process during that year and the governor is authorized to use the merit selection process for a term ending in January following the general election two years later.

We recognize that this interpretation of article V, section 11, has the practical effect of denying a community a needed judicial position for as long as six months when vacancies can only be filled by the election process. Few, if any, individuals would proceed through the nomination process because of the limited term they would serve, unless they had qualified to run for the vacancy. The end result is that vacancies occurring between July 1 and September 1 of an election year are not ordinarily filled until January 1. We cannot rewrite the constitution, and it is clear that the framers

of the constitution intended the election process to be used except "when there is no earlier, reasonably intervening election process available." 305 So.2d at 784.

To avoid this temporary loss of judicial manpower, as illustrated in the instant case, two suggested remedies were presented by the 1978 Constitutional Revision Commission. The first provided that the merit-selection, merit-retention process now used for appointment of appellate judges would also be used for appointment of trial judges. The second retained the election process for trial judges but provided for the filling of trial court vacancies in the same manner as appellate court vacancies, with the appointment being for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment. Adding the phrase "occurring at least one year after the date of appointment" would have eliminated the problem that the Ninth Circuit is experiencing in this case.*

For the reasons expressed, we find that the governor properly called for special elections for each of the judicial vacancies. The petition for mandamus has been previously denied.

It is so ordered.

ALDERMAN, C.J., and McDONALD and EHRlich, JJ., concur.

ADKINS, J., concurs in result only.

BOYD, J., dissents with an opinion.

BOYD, Justice, dissenting.

Article V, section 11(b) of the Florida Constitution clearly provides that vacancies in the offices of circuit and county judge shall be filled through appointment by the governor. The Court today recognizes an exception to this clear constitutional provi-

first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than three persons nominated by the appropriate judicial nominating commission.

* Proposal, Constitutional Revision Commission:

SECTION 11. Vacancies.—

(a) The governor shall fill each vacancy on the supreme court, on a district court of appeal, on a circuit court, or on a county court by appointing for a term ending on the

sion. This misinterpretation will give rise to serious and unnecessary complications for the judiciary. Not only is the governor constitutionally required to fill the vacancies by appointment, he also lacks any authority to call special elections to fill them. I therefore dissent.

Article V, section 11(b) and (c) provides:

(b) The governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

Article V, section 11 reflects a concern for the continuous and orderly functioning of the judiciary. The time limits set for the making of nominations and appointments emphasize the framers' intent that interruptions due to vacancies be of the minimum possible duration. In keeping with this intent, this Court has allowed vacancies to be filled by election rather than by appointment only when "the effective date of the vacancy coincided with the commencement of the terms of other judicial officers elected during the same elective process." *In re Advisory Opinion to the Governor*, 301 So.2d 4, 7 (Fla.1974). See *Spector v. Glisson*, 305 So.2d 777 (Fla.1974).

Here, of course, the vacancies are not scheduled to occur at the time of the commencement of the terms of other judicial officers and the above criterion is not met. The vacancies have already occurred and should have been filled as quickly as possible by the appointment process.

The effect of the Court's decision today is to postpone the filling of the vacancies until January of 1983, by which time the judicial offices in question will have been vacant for five months. As the majority opinion acknowledges, even longer vacancies are possible under the Court's interpretation.

The majority appears to be operating under the mistaken assumption that appointments made now to fill the vacancies would be to terms lasting only until January, 1983. The constitution provides that appointive terms will end on "the first Tuesday after the first Monday in January of the year following the next primary and general election." Art. V, § 11(b), Fla. Const. The Court believes that "the next primary and general election" means the current elections of October and November, 1982. I believe that the language "next primary and general election" refers to the next election for which individuals can qualify as candidates in the normal course of events. Under my interpretation the next primary and general election will be the elections occurring in the fall of 1984. The constitutional language should not be construed to mean the fall, 1982 elections since at the time this case arose it was already too late for candidates to qualify for the current elections. Therefore I conclude that the appointments which can and should be made now will be for terms ending in January of 1985.

My construction of the words "next primary and general election" better serves the cause of continuity and avoidance of disruption in the judiciary. The appointment process fills vacancies more quickly and avoids the need for calling special elections. Construing the words to refer to the next general election after the forthcoming January ensures the availability of a regular election to fill the office after the term of the interim appointed judge.

Although the constitution provides that an "election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term," art. V, § 11(b), it does not contemplate that the election be a special election. The legisla-

ture has the authority to determine how elections of judicial officers are to be conducted. *In re Advisory Opinion to the Governor*, 301 So.2d 4 (Fla.1974). Statutory provisions pertaining to judicial elections are codified in chapter 105, Florida Statutes (1981). There is no provision in that chapter authorizing special elections of judges.

Special elections are provided for only by section 100.101, Florida Statutes (1981), which provides:

A special election or special primary election shall be held in the following cases:

(1) If no person has been elected at a general election to fill an office which was required to be filled by election at such general election.

(2) If a vacancy occurs in the office of state senator or member of the House of Representatives.

(3) If it shall be necessary to elect presidential electors, by reason of the offices of President and Vice President both having become vacant.

(4) If a vacancy occurs in the office of member of the House of Representatives of Congress from Florida.

(5) If a vacancy occurs in nomination.

It is clear that this statute does not envision special elections for judges. Section 100.101 should be considered as in pari materia with section 100.141, which the governor and the secretary of state assert grants them the authority to hold special elections in this case. Section 100.141 only applies when a special election is required in order to fill a vacancy in elective office. Since there is no requirement, either in the constitution or in the statutes, that vacancies in judicial offices be filled by special election, section 100.141 is inapplicable.

The majority's decision will have the effect of requiring special elections whenever

judicial vacancies occur between the last day of the qualifying period for the regular elections and the date of the first primary. This holding may result in substantial and unnecessary public expenses in connection with special elections. For example, if a vacancy occurs one day before the first primary, under the majority's decision, a special election would be required. Because sufficient time would have to be allowed for a qualifying period, it is conceivable that, unlike in the present case, it would be impossible to hold the special election on the same day as the second primary. The special election would have to be held on some other day causing additional expenses. Then there will be questions as to who will bear the additional expenses. The state is required to reimburse the counties for the expenses of special elections held pursuant to section 100.101. § 100.102, Fla.Stat. (1981). The statutes do not specify who is to bear the expenses of holding special elections of judges. I do not view this as an oversight, but rather as further evidence that there is no statutory or constitutional authority for special elections of judges.

Since the vacancies in this case occurred after the qualifying period for the current elections ended, I believe they should be filled by gubernatorial appointment in accordance with the clear language of article V, section 11(b), Florida Constitution. I therefore dissent to the majority decision requiring the vacancies to be filled by special election.



1

Harry J. JONES, Appellant,

v.

The STATE of Florida, Appellee.**No. 76-2153.**District Court of Appeal of Florida,
Third District.

Dec. 20, 1977.

An Appeal from the Circuit Court for
Dade County; Ira L. Dubitsky, Judge.Bennett H. Brummer, Public Defender
and Warren S. Schwartz, Asst. Public De-
fender, for appellant.Robert L. Shevin, Atty. Gen. and Linda
Collins Hertz, Asst. Atty. Gen., for appellee.Before HENDRY, C. J., PEARSON, J.,
and CHARLES CARROLL (Ret.), Associate
Judge.

PER CURIAM.

Affirmed. *Rubiera v. Dade County*, 305
So.2d 161 (Fla.1974); *Brown v. State*, 328
So.2d 497 (Fla.3d DCA 1976).

2

**W. W., T. S., and M. P., juveniles,
Appellants,**

v.

The STATE of Florida, Appellee.**No. 77-634.**District Court of Appeal of Florida,
Third District.

Dec. 20, 1977.

An Appeal from the Circuit Court for
Dade County; Seymour Gelber, Judge.Bennett H. Brummer, Public Defender,
and Elliot H. Scherker, Asst. Public Defend-
er, for appellants.Robert L. Shevin, Atty. Gen., and Antho-
ny C. Musto, Asst. Atty. Gen., for appellee.Before HENDRY, C. J., and PEARSON
and BARKDULL, JJ.

PER CURIAM.

Affirmed. See: *Padron v. State*, 153
So.2d 745 (Fla.3d DCA 1963); *Wetherington
v. State*, 268 So.2d 294 (Fla.3d DCA 1972);
Byrd v. State, 297 So.2d 22 (Fla.1974).

3

Richard KANNER, Appellant,

v.

**Melvyn B. FRUMKES, as Chairman,
Eleventh Circuit Judicial Nominating
Commission, Appellee.****No. 77-798.**District Court of Appeal of Florida,
Third District.

Dec. 20, 1977.

Declaratory judgment action was
brought concerning whether public meet-
ings law applied to judicial nominating
commission. The Circuit Court, Dade
County, William A. Herin, J., dismissed the
complaint, and appeal was taken. The Dis-
trict Court of Appeal held that function of
judicial nominating commission was execu-
tive in nature and could not be limited by
legislative act.

Affirmed.

Judges ⇄ 3

Function of judicial nominating commissions is executive in nature, and thus judicial nominating commissions are not subject to "Government in the Sunshine Law," which requires that certain official meetings be open to the public. West's F.S.A. § 286.011; West's F.S.A. Const. art. 5, § 11(d).

William J. Brown, Miami, for appellant.

Robert L. Shevin, Atty. Gen. and Joseph W. Lawrence II, Asst. Atty. Gen., Tallahassee, for appellee.

Before HAVERFIELD, NATHAN and HUBBART, JJ.

PER CURIAM.

This is an appeal from an order dismissing a complaint for declaratory judgment seeking a determination of whether Section 286.011, Florida Statutes (1975),¹ the Government in the Sunshine Law, is applicable to the Judicial Nominating Commission of the Eleventh Judicial Circuit.

The basic issue raised is whether the function of judicial nominating commissions is an executive one which cannot be limited by legislative act. We find this issue was resolved by our Supreme Court in *In Re Advisory Opinion to Governor*, 276 So.2d 25, 29-30 (Fla.1973):

"[2] The appointment of a judge is an executive function and the screening of applicants which results in the nomination of those qualified is also an executive function. It is the prerogative of the Legislature to provide for the number of persons to serve on each judicial nominating commission and the method of their selection. Once the judicial nominating commissions have been established by the Legislature they become a part of the

1. "286.011 Public meetings and records; public inspection; penalties

"(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at

executive branch of government. The function of the commissions being inherently an executive function, such cannot be limited by legislative action."

Our Supreme Court further held in the case that the power and duty for promulgating rules of procedure for their hearings and findings (independent of any of the three standard recognized divisions of state government), must rest with the members of the commission. *In re Advisory Opinion*, supra, at 30-31.

The function of the judicial nominating commissions being executive in nature and the mandate therefor coming from the Florida Constitution,² not from the legislature, the governor or the judiciary, it is clear that these commissions are not subject to Section 286.011, Florida Statutes (1975).

Affirmed.



Louise Marie THOMPSON, Appellant,

v.

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, DIVISION OF SOCIAL AND ECONOMIC SERVICES, Appellee.

No. 77-987.

District Court of Appeal of Florida,
Third District.

Dec. 20, 1977.

Natural mother of two minor children who were permanently committed to state's

which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting."

2. Article V, Section 11(d), Florida Constitution (1976).

Florida Attorney General Advisory Legal Opinion

Number: AGO 96-63

Date: September 4, 1996

Subject: Judicial Nominating Commission, conflict of interest

Mr. Richard T. Woulfe
Chairman, 17th Judicial Circuit
Judicial Nominating Commission
Post Office Drawer 030340
Fort Lauderdale, Florida 33303

RE: JUDICIAL NOMINATING COMMISSIONS--JUDGES--ATTORNEYS--CONFLICT OF INTEREST--whether attorney in same office as judicial applicant may serve on judicial nominating commission.

Dear Mr. Woulfe:

You ask substantially the following question:

Is an attorney/member of the judicial nominating commission precluded from voting on an application for a judicial vacancy from an attorney employed in the same office as an attorney/commissioner?

In sum:

No substantial conflict of interest is created by the employment of a judicial nominating commission member in the same public agency as one of the applicants for a judicial vacancy that would preclude the commission member from voting on the applicant.

According to your letter, the attorney/member is employed by the Public Defender's Office and an application for a judicial vacancy has been received by the commission from another attorney employed in that office.

Section VII of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions recognizes that judicial nominating commissioners hold positions of public trust. Therefore, their conduct "should not reflect discredit upon the judicial selection process or disclose partisanship or partiality in the consideration of applicants." Section VII further provides:

"A commissioner shall disclose to all other commissioners present

all personal and business relationships with an applicant. If a substantial conflict of interest is apparent, that commissioner shall not vote on further consideration of any affected applicants. A Commissioner shall declare any conflict of interest that he/she has. Alternatively, upon motion by any Commissioner, a majority of all of the Commissioners may declare that a commissioner has a conflict of interest. The effected Commissioner may vote on the motion. . . ."

The determination of whether such a substantial conflict of interest exists must be made on a case-by-case basis and should initially be governed by the conscience of the commissioner.[1]

While the rule does not define "a substantial conflict of interest," the standard to be used would appear to be analogous to that prescribed in section 112.3143(4), Florida Statutes. This section recognizes a voting conflict when a public officer votes on any measure

"which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer" [2]

"Business associate" is defined to mean:

"[A]ny person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or coowner of property." [3]

Thus the statutes contemplate a financial benefit to either the employee, the employer, or a person with whom the employee is engaged in a business enterprise. No such benefit is evident when the attorney/commissioner is employed by a public agency.

The mere employment of an attorney/commissioner in the same public agency as one of the applicants for the judicial vacancy, without some indication of a special private gain, would not preclude the commissioner from voting, although such a relationship should be disclosed to the commission. There is no indication that an employee of the Public Defender's Office would receive any special gain either to himself or to the Public Defender by considering the application of a fellow employee. While the applicant may receive a special gain if appointed, the applicant is not, by virtue of his employment in the same public agency, a business associate of the

attorney/commissioner.

Accordingly, I am of the opinion that no substantial conflict of interest exists when a member of the judicial nominating commission who is employed as an attorney in the public defender's office considers and votes upon an application for a judicial vacancy from an attorney employed in the same office as the attorney/commissioner.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tall

[1] *Cf. Breakstone v. MacKenzie*, 561 So. 2d 1164, 1171 (Fla. 3d DCA 1989). Section VII of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions provides that, upon a motion by any Commissioner, a majority of all of the commissioners may declare that a commissioner has a conflict of interest.

[2] *See also* s. 112.3143(2), Fla. Stat.

[3] Section 112.312(4), Fla. Stat.

Florida Attorney General Advisory Legal Opinion

Number: AGO 96-04

Date: January 11, 1996

Subject: Judicial Nominating Commission, submission of nominees

V. Ted Brabham, Jr., Chair
Fifteenth Judicial Circuit Nominating Commission
322 Banyan Boulevard
West Palm Beach, Florida 33401

RE: JUDICIAL NOMINATING COMMISSIONS--CIRCUIT COURTS--JUDGES--COURTS--GOVERNOR--authority of nominating commission to withdraw names certified to the Governor; ability to supplement list and advise Governor of changed circumstances; ability of Governor to combine separate lists certified for two circuit court vacancies. Art. V, s. 11, State Const.

Dear Mr. Brabham:

On behalf of the Fifteenth Judicial Circuit Nominating Commission you ask substantially the following questions:

(1) Does a judicial nominating commission have the authority to withdraw names certified to the Governor as nominees for a judicial vacancy on the circuit court?

(2) May the names on separate lists certified by a judicial nominating commission for two circuit court vacancies be combined for the Governor's consideration?

In sum:

(1) While a judicial nominating commission does not have the authority to withdraw the names certified to the Governor, the commission may supplement that list with additional names and advise the Governor of any changed circumstances regarding the certified nominees at any time prior to the Governor's appointment to fill the vacancy.

(2) The names on separate lists certified by the judicial nominating commission for two circuit court vacancies may be combined for consideration by the Governor.

Question One

Article V, section 11(b) and (c), Florida Constitution, provides:

"(b) The Governor shall fill each vacancy on a circuit court by appointing . . . one of not fewer than three persons nominated by the appropriate judicial nominating commission. . . .

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him."

This office has been advised that the Judicial Nominating Commission for the Fifteenth Judicial Circuit (JNC) certified a list of three nominees for a vacancy on the circuit court for the Fifteenth Judicial Circuit on November 14, 1995. A board of independent inquiry was asked by the Governor to examine allegations that the JNC's choices were influenced by political considerations rather than the nominees' qualifications. A question has been raised as to whether the JNC may withdraw the list certified to the Governor on November 14, 1995, and resubmit a new list of nominees.

Article V, section 11(b) and (c), Florida Constitution, makes no provision for the withdrawal of a certified list of nominees. Rather the constitutional provision contemplates that a JNC will certify a list of nominees to the Governor within thirty days (or 60 days, if the Governor extends the period). No provision is made for the JNC to withdraw names previously certified. To allow a JNC to withdraw a name previously submitted would not conform to the procedure set forth in Article V, section 11.

The constitutional provision, however, does not limit the number of names to be submitted by the JNC, but rather requires that the JNC submit "not fewer than three persons" for consideration. The JNC has complied with this constitutional mandate. Nothing, however, precludes the JNC from submitting additional names to the Governor at any time prior to the Governor's appointment to fill the vacancy. Moreover, it would appear to be within the scope of the JNC's duties and responsibilities to advise the Governor of information received by the JNC subsequent to certification that would affect the qualifications of a nominee. [1]

The Governor would have the authority to fill the vacancy by appointing an individual from any of the nominees provided by the JNC. While the Governor may reject those nominees who do not meet the qualifications for judicial candidates, the constitution contemplates that the Governor will fill the vacancy from the nominees submitted by the JNC. [2]

Accordingly, I am of the opinion that while the JNC does not have the authority to withdraw names certified to the Governor, nothing precludes the commission from supplementing a list with additional names at any time prior to the Governor's appointment to fill a vacancy.

Question Two

This office has been advised that there are two judicial vacancies in the Fifteenth Judicial Circuit. Two separate lists were sent to the Governor, on November 14, 1995, and November 29, 1995, respectively. A question has been raised as to whether the two lists may be combined so that the Governor may fill the vacancies from any name on the combined lists.

The Supreme Court of Florida, in considering Article V, section 11, Florida Constitution, has stated:

"The purpose of the judicial nominating commission is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge. When the commission has completed its investigation and reached a conclusion, the persons meeting the qualifications are nominated. In this respect the commissioners act in an advisory capacity to aid the Governor in the conscientious exercise of his executive appointive power. [3]

It is the Governor who is constitutionally charged with the responsibility of filling judicial vacancies. The JNCs and those who appoint their members must recognize that they act to assist the Governor in performing this function. Manipulation of the process of selecting nominees in an attempt to influence the appointment of a particular individual nominee constitutes a violation of the constitutional scheme and a usurpation of the Governor's appointment power which should not be tolerated.

In cases where a judicial nominating commission is considering more than one vacancy, The Supreme Court of Florida in *In re Advisory Opinion to the Governor*, [4] has stated that the Governor is not required to fill the vacancies until the commission has submitted three names for each vacancy. Thus, the Court held that the commission was required to submit nine names to the Governor for three vacancies and that the sixty days in which the Governor was to make his decision did not begin to run until he received the nine names.

While the Court's opinion makes it clear that nine names were required to be submitted for three vacancies, it did not state that those names must be submitted on separate lists. Moreover, as this

office noted in Attorney General Opinion 93-87, nothing in the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions mandates that the names of nominees for multiple judicial vacancies be submitted on separate lists.[5] In fact, the rules require that the nominees not be ranked or listed in such a manner as to indicate partiality or preference by the commission. Thus, this office stated in Attorney General Opinion 93-87 that the submission of separate lists for multiple vacancies may be construed to violate the Uniform Rules. This office, therefore, concluded that where there are two or more circuit court vacancies within a judicial circuit, a single list for the two vacancies may be submitted, provided that the number of nominees contained on the list is equal to at least three for each vacancy.

In an analogous case, the Supreme Court of Florida in *State v. Kiesling*[6] held that the nominating council for the Public Service Commission could not submit separate lists for each vacancy but rather should prepare one list from which the Governor could fill all vacancies, stating that "[b]y submitting separate lists the [Nominating] Council tried to restrict the Governor's appointing authority." In concluding that the nominating council had acted inappropriately, the Court determined that "the Nominating Council . . . usurped its authority by trying to restrict the Governor's statutory power to appoint." [7]

In light of the above, I am of the opinion that the names on separate lists certified by the Judicial Nominating Commission on November 14, 1995, and on November 29, 1995, may be combined for consideration by the Governor.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tall

[1] See *Advisory Opinion to the Governor*, 276 So. 2d 25, 30 (Fla. 1973). Cf. *Spector v. Glisson*, 305 So. 2d 777, 778 (Fla. 1974) (one purpose of constitutional provision for use of nominating commissions is to place restraint on purely political appointments without an overriding consideration of qualification and ability).

[2] See, e.g., Art. V, s. 8, Fla. Const. (in order to be eligible for office as a circuit court judge, an individual must be an elector of the state, must reside in the territorial jurisdiction of the court, shall not be seventy years of age or older, and must have been a member of The Florida Bar for the preceding five years).

[3] 276 So. 2d at 30.

[4] 551 So. 2d 1205, 1206 (1989).

[5] See s. V of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions (Uniform Rules).

[6] 632 So. 2d 601, 604 (Fla. 1994).

[7] *Id.*

Florida Attorney General Advisory Legal Opinion

Number: AGO 93-87

Date: December 9, 1993

Subject: Judicial Nominating Commission Vacancies

Mr. Joseph R. North
Chairperson
Judicial Nominating Commission
Twentieth Judicial Circuit
Post Office Box 280
Fort Myers, Florida 33902-0280

RE: JUDICIAL NOMINATING COMMISSION--JUDGES--VACANCIES--no
requirement that separate list of nominees be submitted for each
vacancy when multiple vacancies. s. 11, Art. V, State Constitution.

Dear Mr. North:

On November 4, 1993, you asked, on behalf of the Twentieth Judicial
Circuit Nominating Commission, substantially the following question:

If there are two or more circuit court vacancies within the
Twentieth Judicial Circuit and the Judicial Nominating Commission is
obligated to nominate not fewer than three persons for each vacancy,
is the Commission required to submit to the Governor a separate list
of not fewer than three nominees for each vacancy?

In sum:

Absent judicial clarification, there is no constitutional
prohibition against the Judicial Nominating Commission submitting a
single list for two or more circuit court vacancies provided that
the number of nominees contained on the list is equal to at least
three for each vacancy.

Section 11(b), Art. V, State Const., provides in pertinent part:

"The governor shall fill each vacancy on a circuit court or on a
county court by appointing . . . one of not fewer than three persons
nominated by the appropriate judicial nominating commission."

In In Re Advisory Opinion to the Governor, [1] The Supreme Court of
Florida considered the above constitutional provision and the duties

of a judicial nominating commission (JNC) thereunder to nominate candidates for more than one judicial vacancy in the same judicial circuit. In that case, the JNC had submitted the same six names to the Governor for appointment to three circuit court vacancies. The Court rejected the JNC's claim that it had complied with s. 11, Art. V, State Const., [2] and held that in the case of three vacancies, the constitution contemplates that there must be at least nine nominees, three for each vacancy. The Court concluded that the Governor was not required to make any appointments until the commission had submitted nine names.

While the Court's opinion makes it clear that nine names were required to be submitted for the three vacancies, the Court did not state that those nine names must be submitted on three separate lists. Moreover, nothing in the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions mandates that the names of nominees for multiple judicial vacancies be submitted on separate lists. [3] The Uniform Rules provide that the nominees for judicial vacancies are not to be ranked or listed in such a manner as to indicate partiality or preference by the commission. [4] The submission of separate lists for multiple vacancies may be construed to violate the Uniform Rules.

Accordingly, in the absence of judicial clarification, I am of the opinion that there is no constitutional prohibition against the Judicial Nominating Commission submitting a single list for two or more circuit court vacancies provided that the list contains not fewer than three nominees for each vacancy.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] 551 So. 2d 1205 (Fla. 1989).

[2] The JNC argued that six names would allow the Governor six names to choose from for the first vacancy, five for the second vacancy and four for the third vacancy. Thus, the JNC argued that it had supplied at least three names for each vacancy.

[3] See s. V of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions (Uniform Rules).

[4] See s. VII of the Uniform Rules prohibiting the JNC from ranking nominees or otherwise disclosing a preference, and s. VI of the

Uniform Rules stating that the JNC shall make public the names of all persons recommended for gubernatorial appointment, without indicating any preference of the JNC.

Florida Attorney General Advisory Legal Opinion

Number: AGO 92-72

Date: October 7, 1992

Subject: Statewide JNC for Judges of Compensation Claims

Mr. Stephen L. Rosen
Chairman, Statewide Judicial Nominating
Committee for Judges of Compensation Claims

RE: LABOR AND EMPLOYMENT SECURITY, DEPARTMENT OF-VACANCIES-PUBLIC OFFICERS AND EMPLOYEES-commission not authorized to promulgate rules to govern its activities; commission limited to act as statutorily authorized or reasonably necessary to carry out its statutorily prescribed purpose.

QUESTION:

May the Statewide Judicial Nominating Committee for Judges of Compensation Claims promulgate rules regarding: (a) reappointment or retention proceedings for present judges of compensation claims; (b) nomination of new appointees to fill vacancies for judges of compensation claims; (c) meeting procedures; (d) filling vacancies on the nominating committee; (e) removal of committee members; and (f) any or all procedures necessary to carry out the purpose of the committee?

SUMMARY:

The Statewide Judicial Nominating Committee for Judges Of Compensation Claims has not been granted any rule-making authority and may exercise only those powers specifically conferred by Ch. 440, F.S., and those reasonably necessary to carry out its statutorily prescribed purpose.

It is well settled that administrative agencies are creatures of the Legislature, having no common law powers.[1] Thus, the power of such administrative agencies is limited to that conferred expressly or by necessary implication for the purpose of carrying out the aims for which they were created.[2] All rule-making authority granted to an administrative agency, likewise, is limited by the statute conferring such power.[3] Thus, an administrative agency may not enlarge its scope of power through rules.[4]

Section 440.45(1), F.S., mandates that the Governor appoint as many full-time judges of compensation claims to the workers' compensation trial courts as may be necessary to effectively perform the duties prescribed for them under Ch. 440, F.S. Each appointment is made from a list of at least three persons nominated by a statewide nominating commission. Section 440.45, F.S., further provides:

"The statewide nominating commission shall be composed of the following: five members, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law; five electors, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, appointed by the Governor; and five electors, one of each who resides in each of the territorial jurisdictions of the district courts of appeal, and who are not members of The Florida Bar, selected and appointed by a majority vote of the other ten members of the commission."

Thus, the appointment and composition of the statewide nominating commission is statutorily prescribed and may not be altered by rule, absent legislative authorization. There is no provision, however, for the enactment of rules to govern the procedures of the statewide nominating commission.

Section 440.45, F.S., was amended during the 1990 Legislative Session to provide for the nomination of prospective judges of compensation claims by a statewide nominating commission.[5]

Prior to its amendment, s. 440.45(1), F.S. (1989), provided for the nomination of judges of compensation claims by the appellate district judicial nominating commission for the appellate district in which the judge of compensation claims would principally conduct hearings. Pursuant to s. 11, Art. V, State Const., each district court of appeal has a separate judicial nominating commission as provided by general law.[6] There is also a constitutional requirement that uniform rules of procedure be established by the judicial nominating commissions at each level of the court system. These rules are reflected in the Uniform Rules of Procedure for District Courts of Appeal Judicial Nominating Commissions, Florida Rules of Court.

When s. 440.45, F.S. (1989), was amended to create a statewide nominating commission for the nomination of judges of compensation claims, no attendant provision for rules of procedure was enacted, nor was the commission or any other entity empowered to promulgate rules to govern the procedures of the commission. Given the lack of authority or statutory direction, it appears that the matter of rule-making authority and the procedures for the operation of the

statewide nominating commission should be addressed legislatively.

In light of this conclusion, your questions are answered as follows:

(a) Section 440.45(2), F.S., provides that each full-time judge of compensation claims is appointed for a term of four years, but may be removed during such term by the Governor for cause. Prior to the end of a judge's term, the judge's conduct is reviewed by the statewide nominating commission for a determination of whether such judge should be retained in office. Evaluation forms prepared by the chief judge of compensation claims are completed by each attorney within 45 days from the date of any hearing in which the attorney participated and are forwarded to the statewide nominating commission for its consideration in determining whether a judge should be retained. [7]

At least six months prior to the expiration of the term of a judge of compensation claims, the statewide nominating commission's report is furnished to the Governor. If the nominating commission votes not to retain a particular judge, the judge is not reappointed, but remains in office until a successor is appointed and qualified. If the commission votes to retain the judge, then the Governor must reappoint the judge of compensation claims for a term of four years.

The plain language of the statute provides a method by which presiding judges of compensation claims are reappointed or retained. No other manner or method may be used. [8]

(b) While the statewide nominating commission for judges of compensation claims has no authority to promulgate rules to provide for the selection of nominees for judges of compensation claims, the commission may exercise powers which by necessary implication are required to carry out the purpose of the act. [9] The Uniform Rules of Procedure for District Courts of Appeal Judicial Nominating Commissions sets forth procedures for the selection of new prospective appointees to be judges on the district courts of appeal. As noted above, these rules provided the procedures for selection of nominees for judges of compensation claims prior to the amendment of s. 440.45, F.S., in 1990. While the uniform rules have not been made applicable to the statewide nominating commission, they may provide guidance for the commission to carry out its duties under s. 440.45, F.S.

(c) Relative to meetings of the statewide nominating commission, s. 440.45, F.S., only requires that such meetings and the determinations of the commission be open to the general public. In the absence of statutory authority, however, the statewide nominating commission may not promulgate rules governing procedures for its meetings.

(d) Absent any constitutional or statutory provision, the power to make an appointment to an office includes the power to fill a vacancy in the office.[10] This office, in AGO 92-58, concluded that the statewide nominating commission did not possess the authority to fill vacancies on the commission which are mandated by s. 440.45, F.S., to be appointed by the Governor and The Florida Bar. Accordingly, to the extent the commission is statutorily authorized to appoint its own members, it would appear that vacancies in those positions may be filled by the commission. While the lack of rule-making authority prevents the statewide nominating commission from promulgating rules to control the filling of such vacancies, the commission may act in a reasonably necessary manner to fulfill its statutorily prescribed duty to appoint specified members on the commission.

(e) There is no statutory provision for the removal of members of the statewide judicial nominating commission for judges of compensation claims by members of the commission. As noted above, prior to the creation of a statewide judicial nominating commission for judges of compensation claims, the District Courts of Appeal Judicial Nominating Commissions nominated individuals for appointment by the Governor to be judges of compensation claims.

The composition of judicial nominating commissions is controlled by s. 43.29, F.S., which, in part, provides that "[a] member of a judicial nominating commission shall serve a term of 4 years and is not eligible for consecutive reappointment." [11] While the provisions in s. 43.29, F.S., are applicable to the District Courts of Appeal Judicial Nominating Commissions, there is no statutory provision making it applicable to the statewide judicial nominating commission for judges of compensation claims.[12]

Section 112.52(1), F.S., states:

"When a method for removal from office is not otherwise provided by the State Constitution or by law, the Governor may by executive order suspend from office an elected or appointed public official, by whatever title known, who is indicted or informed against for commission of any felony, or for any misdemeanor arising directly out of his official conduct or duties, and may fill the office by appointment for the period of suspension, not to extend beyond the term."

The State Constitution also gives the Governor authority to suspend by executive order stating the grounds "any state officer not subject to impeachment . . . for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform his official duties, or commission of a felony" [13] Given the absence of a statutorily or constitutionally prescribed method for the removal of members of the statewide judicial nominating

commission for judges of compensation claims by the commission, it would appear that the Governor would possess the authority for such removal under the specified conditions.

(f) Section 120.52(16), F.S., defines "[r]ule" as "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency" (e.s.) Prior to the adoption of any rule, [14] an agency must give notice of its intent to adopt a rule, explaining the purpose and effect of the proposed rule and *specifying the legal authority under which its adoption is authorized*. [15] As discussed above, there is no statutory authority for the Statewide Judicial Nominating Commission for Judges of Compensation Claims to promulgate rules to govern its activities. Thus, the ability of the commission to conduct its affairs in an orderly fashion appears to be doubtful and legislative action to remedy this oversight is advisable.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] See *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So.2d 628, 636 (1 D.C.A. Fla., 1974).

[2] See *Williams v. Florida Real Estate Commission*, 232 So.2d 239, 240 (4 D.C.A. Fla. 1970), *order quashed*, 240 So.2d 304, 306 (Fla. 1970) (agency has no powers except those mentioned in the statute or reasonably implied).

[3] See *Board of Trustees of the Internal Improvement Trust Fund of State of Florida v. Board of Professional Land Surveyors*, 566 So.2d 1358, 1360 (1 D.C.A. Fla., 1990).

[4] See *Department of Transportation v. James*, 403 So.2d 1066, 1068 (4 D.C.A. Fla., 1981) (regulatory body cannot enlarge its authority through promulgation of rules beyond the authority delegated by statute).

[5] See s. 39, Ch. 90-201, Laws of Florida.

[6] Section 11(d), Art. V, State Const., also provides that there be a separate judicial nominating commission as provided by general law for the supreme court and each judicial circuit for all trial courts within the circuit.

[7] The evaluation form contains questions relating to the following: timeliness of decisions; diligence, availability, and punctuality; neutrality and objectivity regarding legal issues; knowledge and application of law; courtesy toward litigants, witnesses, and lawyers; judicial demeanor; and willingness to ignore irrelevant considerations such as race, sex, religion, politics, identity of lawyers, or parties.

[8] See *Alsop v. Pierce*, 19 So.2d 799, 805 (Fla. 1944) (where the Legislature has prescribed the mode or directs how a thing shall be done, it is, in effect, a prohibition against its being done in any other way).

[9] See *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282, 284 (5 D.C.A. Fla., 1985) (agency has only such power as is expressly or by necessary implication is granted by the legislative enactment) and *Peters v. Hansen*, 157 So.2d 103 (2 D.C.A. Fla., 1963) (statute imposing a duty upon a public officer to accomplish a stated governmental purpose confers by implication every particular power necessary or proper for the complete exercise of such duty).

[10] See 67 C.J.S. *Officers*, s. 77.

[11] Section 43.29(3), F.S.

[12] While the name of the Statewide Judicial Nominating Commission for Judges of Compensation Claims superficially indicates a relation to judicial nominations, s. 11(d), Art. V, State Const., recognizes the existence of separate judicial nominating commissions as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit.

[13] Section 7(a), Art. IV, State Const.

[14] With the exception of "emergency rules" adopted pursuant to s. 120.54(9), F.S.

[15] Section 120.54(1), F.S.



THE FLORIDA BAR

650 APALACHEE PARKWAY
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

904/561-5600
FAX 904/222-3729

September 18, 1991

MEMORANDUM

To: Vicki Russell
From: Tim Chinaris *TC*
Re: Request for ethics opinion

You have requested an ethics opinion regarding the following question. A lawyer is a Judicial Nominating Commissioner. When the lawyer-commissioner appears before a sitting judge who has before that commission a pending application for another judgeship, must the lawyer disclose this information to the lawyer's opponent?

There are no formal opinions of the Professional Ethics Committee dealing with the exact situation that you have presented. Several of the Committee's opinions, however, provide some guidance. (Copies of all cited opinions are attached.)

In Opinion 61-30, the Professional Ethics Committee addressed the issue of whether it was ethically permissible for an attorney to practice before a judge who was the brother of the attorney's partner. The Committee indicated that it was primarily the responsibility of the judge to recognize a conflict situation that might require his recusal. In the Committee's view, the attorney was not obligated to decline the representation in this type of situation. Also instructive is Opinion 74-46, in which the Committee disapproved the idea of placing opposing counsel "in the delicate position of having to suggest the judge's possible bias."

Two opinions are based on factual circumstances that are at least somewhat related to the situation that you have presented. Opinion 59-10 concerned an attorney who also was a county commissioner. The county commission controlled the circuit court's allotment of space, departmental budget, and supplemental salary. The Committee concluded that it was permissible for the attorney-commissioner to practice before the circuit judges. The Committee stated:

Admittedly, it would be possible for a judge to be influenced by the ability of the attorney in his capacity as a County Commissioner to influence his work conditions and salary, but we

THE FLORIDA BAR

feel that the probabilities are so slight that no ruling should be made against such practice.

On the other hand, in Opinion 62-5 the Committee concluded that it would be improper for the partner of a municipal officer having power to appoint municipal judges to practice before such judges. The Committee stated that "it was improper for a member of a governmental body empowered to appoint judges to practice before the Court to which appointments were made" and that, consequently, it would be improper for the official's partner to practice before that court.

Of course, neither Opinion 59-10 nor Opinion 62-5 addressed the exact situation that you have presented. The Judicial Nominating Commission is not empowered to appoint judges; thus, it appears that the situation presented is more factually similar to that discussed in Opinion 59-10. In view of the above-cited authorities, it is my opinion that: (1) the attorney is not obligated to decline, or to withdraw from, the representation (rather, it appears to be the responsibility of the judge to recognize his ethical obligations and to act accordingly); (2) if the judge is not aware of the attorney's position on the Judicial Nominating Commission, the attorney should communicate this fact to the judge; and (3) the attorney is not obligated to inform his opponent of the information in question.

If I can be of further assistance, please advise.

T.P.C.



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

October 31, 1990

Mr. William C. Clark
Chairman, Supreme Court Judicial
Nominating Commission
Post Office Box 6278
West Palm Beach, Florida 33405

INFORMATION COPY

90-90

Dear Mr. Clark:

As Chairman of the Judicial Nominating Commission for the Florida Supreme Court and on behalf of the commission, you ask substantially the following question:

Must the Judicial Nominating Commission for the Supreme Court submit at least three names to the Attorney General for the position of Statewide Prosecutor and if so, are there any restrictions on whom the commission may nominate.

In sum, I am of the opinion:

The Judicial Nominating Commission for the Supreme Court must submit at least three names to the Attorney General for the position of Statewide Prosecutor. The commission may nominate any individual who is qualified for the position and is willing to serve.

Section 4(c), Art. IV, State Const., provides in part:

There is created in the office of the attorney general the position of statewide prosecutor. . . . The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law. (e.s.)

Section 16.56, F.S., provides for the creation of the Office of Statewide Prosecution in the Department of Legal Affairs. Pursuant to subsection (2) of that statute:

The Attorney General shall appoint a statewide prosecutor from not less than three persons nominated by the judicial nominating commission for the Supreme Court. The statewide prosecutor shall be in charge of the Office of Statewide Prosecution for a term of 4 years to run concurrently with the term of the appointing official. The statewide prosecutor shall be an elector of the state, shall have been a member of The Florida Bar for the preceding 5 years, and shall devote full time to his duties and not engage in the private practice of law. . . . (e.s.)

The term of office of the present Statewide Prosecutor ends in January 1991. The commission has advertised the vacancy on two separate occasions; however, only one individual, the present statewide prosecutor, has applied for the position. You, therefore, ask whether the commission must submit three names to the Attorney General for his consideration in light of the fact that only one individual has applied for the position.

Where the language of a statute or constitutional provision is plain and unambiguous, such language must be given effect according to the plain meaning of the words used.² The Constitution and the statutes require the Attorney General to appoint a Statewide Prosecutor from not less than three persons nominated by the Judicial Nominating Commission for the Supreme Court. Thus, the Constitution and statutes appear to mandate that the judicial nominating commission submit at least three names for the position of Statewide Prosecutor to the Attorney General.

In light of this requirement, you inquire as to what, if any, restrictions exist regarding the commission's authority to nominate an individual for the position of Statewide Prosecutor.

The Constitution and statutes do not specify the procedures to be utilized in nominating three persons for the position of Statewide Prosecutor.⁴ In a somewhat analogous situation, however, this office in AGO 75-245 considered the duty of a judicial nominating commission to submit to the Governor the names of nominees to fill a judicial vacancy. Pursuant to s. 11(b), Art. V, State Const., the Governor must appoint "one of not fewer than three persons nominated by the appropriate judicial nominating commission."

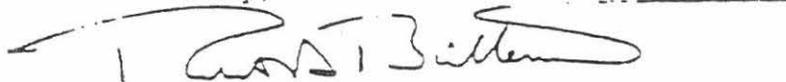
This office concluded that while the Constitution did not expressly so provide, it seems clear that no person should be

nominated by the commission unless he or she has, at least, consented to becoming a candidate for appointment to that office. Thus, this office concluded that the commission should not submit the names of nominees without first making sure that such persons are not only qualified to perform the duties of the office but are also willing to accept the commission if appointed. By so doing, the appointing official is assured of having a choice of at least three persons who are qualified and willing to accept the office as contemplated by the Constitution.

Such a conclusion would appear to be equally applicable to the instant inquiry. Section 4(c), Art. IV, State Const., requires that the Attorney General appoint a Statewide Prosecutor from at least three nominees of the commission. In order to effectuate the purpose and intent of this constitutional provision, i.e., to afford the Attorney General a choice, it appears clear that the individuals so nominated must not only be qualified but must be willing to serve in the position if appointed.

Accordingly, I am of the opinion that the Judicial Nominating Commission for the Supreme Court must submit at least three names to the Attorney General for the position of Statewide Prosecutor. The commission may nominate any individual who is qualified for the position provided the individual is willing to serve if appointed.

Sincerely,



Robert A. Butterworth
Attorney General

RAB/tjw

¹ See, s. 16.56(1), F.S., as amended by s. 1, Ch. 90-12, Laws of Florida.

² See, Thayer v. State, 335 So.2d 815 (Fla. 1976); Florida State Racing Commission v. McLaughlin, 102 So.2d 574 (Fla. 1958) (the Legislature is conclusively presumed to have a working knowledge of the English language and when a statute has been drafted in such manner as to clearly convey a specific meaning the only proper function of the court is to effectuate this legislative intent). See also, State ex rel. McKay v. Keller, 191 So. 542 (Fla. 1939) (principles of construction applicable to statutes are also applicable to Constitution).

³ Cf., In re Advisory Opinion to the Governor, 551 So.2d 1205 (Fla. 1989), in which the Court, in considering a judicial nominating commission's responsibility to nominate individuals for judicial vacancies pursuant to s. 11, Art. V, State Const., stated that the commission is required to submit three names for each vacancy.

⁴ Compare, Supreme Court Nominating Commission Rules of Procedure, Florida Rules of Court, setting forth the procedures for the commission when considering individuals for a vacancy on the Supreme Court.



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

June 26, 1990

INFORMATION COPY

90-49

Mr. Wayne J. Boyer
Attorney at Law
1968 Bayshore Boulevard
Dunedin, Florida 34698

Dear Mr. Boyer:

As a member of the Judicial Nominating Commission in the Sixth Judicial Circuit, you ask substantially the following question:

May I as a circuit judicial nominating commission member, appointed by the Governor, vote to fill a vacancy in one of the commission appointee positions when the vacancy will not occur until after the expiration of my term on the commission?

In sum, I am of the opinion that:

A circuit judicial nominating commission member is not authorized to vote to fill the position of commission appointee, the term of which does not begin until his own term has expired.

Section 11(d), Art. V, State Const., provides that there shall be a separate judicial nominating commission as provided by law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Section 20(c)(5), Art. V, State Const., provides for the composition of a judicial nominating commission (JNC) by stating:

a. Three members appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the

territorial jurisdiction of the affected court,
district or circuit;

b. Three electors who reside in the territorial
jurisdiction of the court or circuit appointed by
the governor; and

c. Three electors who reside in the territorial
jurisdiction of the court or circuit and who are
not members of the bar of Florida, selected and
appointed by a majority vote of the other six
members of the commission.

Members of a judicial nominating commission serve a term of four
years.² Your inquiry concerns whether you are authorized to vote
to fill an anticipated vacancy in one of the commission appointee
positions when the vacancy will not occur until after the
expiration of your term on the commission.

It has been generally held that an appointment to an office in
anticipation of a vacancy is proper only when the officer or
body making the appointment is still in office when the vacancy
occurs.³ This principle was recognized by The Supreme Court of
Florida in Tappy v. State,⁴ when it stated:

A prospective appointment is valid if the governor
who makes the appointment is still in office at the
time the vacancy occurs and the commission becomes
effective. (emphasis supplied by the Court)

I am not aware of anything in the Constitution or the statutes
which would authorize a commission member to vote on the
commission appointees prior to there being a vacancy in such
office when such commission member will not be a member of the
commission at the time the vacancy occurs.

While s. 11(d), Art. V, State Const., provides that uniform rules
of procedure shall be established by the JNCs at each level of
the court system, the rules for the circuit JNCs do not appear to
require a contrary conclusion. Section IX of the Rules for the
Circuit Judicial Nominating Commissions merely provides that
"[n]otwithstanding commission appointees' participation in the
nomination and interview process, only those commissioners

appointed by The Florida Bar Board of Governors and the Governor of the State of Florida and who are members of the commission shall be entitled to vote for commission appointees."⁵

Accordingly, I am of the opinion that you are not authorized to vote on an anticipated vacancy of a commission appointee when your term would expire prior to the time of the vacancy occurring.

Sincerely,



Robert A. Butterworth
Attorney General

RAB/tgk

¹ And see, s. 43.29(1), F.S.

² Section 20(c)(7), Art. V, State Const. And see, s. 43.29(3), F.S., which provides that a member is not eligible for consecutive reappointments.

³ See, 67 C.J.S. Officers s. 40 which further states that an officer with the power of appointment to a public office has no right to forestall the rights and prerogatives of his successor by making a prospective appointment to fill an office, the term of which is not to begin until his own term and power to appoint have expired.

⁴ 82 So.2d 161, 166 (Fla. 1955).

⁵ Compare, s. IX, Rules of District Court Nominating Commissions, which provides in part that only those commissioners appointed by The Florida Bar Board of Governors and the Governor of the State of Florida and who are members of the commission on the date of the annual meeting shall be entitled to vote for commission appointees.



OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

JUN 13 1988

MEMORANDUM

To: Mr. Louis J. Williams
Chairman, Tenth Circuit Judicial
Nominating Commission

From: Lagran Saunders - ^{dl} ()
Assistant Attorney General

Re: Resignation of circuit judge/ Responsibilities of
Judicial Nominating Commission

Date: June 10, 1988

You ask the following:

1. Does a letter of resignation submitted by a circuit court judge effectively create a vacancy in the judgeship requiring the judicial nominating process?
2. In the event an election scheduled subsequent to the judge's resignation will provide a successor, is the nominating process unnecessary?

Section 3, Art. X, State Const., provides in pertinent part that a "[v]acancy in office shall occur upon . . . resignation . . ."¹ The Supreme Court of Florida in *Spector v. Glisson*² concluded that this constitutional provision is applicable to judges. The Court held that "an effective resignation does create a present vacancy to be filled . . ."³ Therefore, when the resignation is tendered, even though it is to take effect in the future, there is a vacancy created.

Section 11, Art. V, State Const., provides as follows:

- (b) The governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons

Memorandum
Mr. Louis J. Williams
Page Two

nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

The above constitutional provisions have been recognized by The Supreme Court of Florida as creating a judicial nominating commission which is "mandated by the constitution to submit the nominations of three persons to the governor within thirty days following a judicial vacancy."⁴ Therefore, it appears a judicial nominating commission does not have discretion in assuming its duty to submit the nominations of three persons to the Governor as mandated by the Constitution.

In *Judicial Nominating Commission, Ninth Circuit v. Graham*,⁵ The Supreme Court of Florida concluded that the "purpose underlying article V, section 11, is to provide for the election process at the next available primary and general election." The Court noted that the holding in *Spector v. Glisson* was based upon the fact that s. 11, Art. V., State Const., was intended to allow the election process to select members of the judiciary if there was adequate time for candidates to qualify and run during the regularly scheduled election process.⁶

The Court concluded "if the vacancy is known in sufficient time to schedule a special election during the already scheduled primary and general election dates, then a special election should be held."⁷ This led to the conclusion that vacancies occurring between July 1 and September 1 of an election year are not ordinarily filled until January 1. The Court further recognized that the framers of the Constitution intended the election process to be used except "when there is no earlier, reasonably intervening election process available."⁸

It appears the holding in *Judicial Nominating Commission, Ninth Circuit v. Graham* would be applicable to the situation you have

Memorandum
Mr. Louis J. Williams
Page Three

raised. In that case, however, the Governor had ordered special elections to be held to fill the vacancies. The judicial nominating commission then sought a writ of mandamus to require the Governor to fill the vacancies by the merit selection process. The Court upheld the independence of the nominating commission's duties in the filling of judicial vacancies, but on the merits determined that the Governor had properly called for special elections to fill vacancies such as the ones presented in the case.

I am unable to conclude therefrom that a judicial nominating commission has the discretion to decide whether it will provide nominations for judicial vacancies. As noted above, the commission has a constitutional mandate to supply at least three nominations to the Governor, unless, as in *Judicial Nominating Commission, Ninth Circuit v. Graham*, the Governor orders a special election to be held during the regularly scheduled primary and general election. In the absence of such a situation, it is my opinion that a judicial nominating commission must provide nominations to the Governor for consideration for appointment to fill a judicial vacancy.

I trust these informal comments are helpful in resolving the questions you have raised. This opinion was prepared by the Opinions Section to be of assistance and does not represent a formal opinion of the Attorney General.

/tls

cc: Mr. Joseph G. Spicola, Jr.

¹ See also, s. 114.01(d), F.S., providing that a vacancy in office shall occur "[u]pon the resignation of the officer and acceptance thereof by the Governor."

² 305 So.2d 777 (Fla. 1974).

³ Id. at 780.

⁴ *Judicial Nominating Commission, Ninth Circuit v. Graham*, 424 So.2d 10, 11 (Fla. 1982).

Memorandum
Mr. Louis J. Williams
Page Four

5 Id.

6 The Court discussed the decision of In re Advisory Opinion of
the Governor Request of September 6, 1974, 301 So.2d 4 (Fla.

1974), in which the Court advised the Governor that he need not
call a special election and should use the merit selection
process when knowledge of a vacancy occurred at or after the time
of the first primary election, based upon the timing of the
vacancy making it impossible for the electorate to fill the
vacancy in the elections to be held that year. This circum-
stance, however, is not present in the situation at hand.

7 424 So.2d at 12.

8 Id. at 12, citing Spector v. Glisson.

AL



DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

November 4, 1987

FEDERAL EXPRESSED THIS DATE

Mr. John W. Frost, II
Chairman
Second Judicial Nominating
Commission
Post Office Box 2188
Bartow, Florida 33830

Dear Mr. Frost:

You have asked my opinion as to whether the correspondence between your office and persons wishing to obtain an application for the vacant seat on Florida's Second District Court of Appeal are public records which must be disclosed.

Based upon the following analysis, it is my opinion that such correspondence is a public record subject to disclosure.

Section 11(d), Art. V, State Const., provides:

There shall be a separate judicial nominating commission as provided by general law for . . . each district court of appeal . . . Uniform rules of procedure shall be established by the judicial nominating commissions . . . Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public. (e.s.)

Section 11(d), Art. V, State Const., does not define the term "records" of the judicial nominating commissions.

Mr. John W. Frost, II
Page Two

You refer to s. III of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions which provides in pertinent part:

All applications, and other information received from or concerning applicants, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Since the persons requesting applications are not yet (and may never be) applicants, you ask whether information regarding these individuals, received by you in your capacity as Chairman of the Second Judicial Nominating Commission, must be disclosed.

Prior to the approval of House Joint Resolution (EJR) 1160 at the November 1984, general election, records of the judicial nominating commissions were not subject to Ch. 119, F.S. As the Supreme Court of Florida in *In re Advisory Opinion to the Governor*¹ stated:

[T]he judicial nominating commissions are a part of the executive branch of government performing an executive function which cannot be limited by legislative act. The Governor has no power to establish rules governing the operation of the nominating commissions, as the exercise of such a power might tend to curtail the constitutional independence of the commissions. The power and duty for promulgating rules for the commissions must rest with the members of the commissions.

House Joint Resolution 1160 amended s. 11(d), Art. V, State Const., to clearly provide that, with the exception of deliberations, records of the judicial nominating commissions are public records which must be disclosed. In reviewing the history surrounding the adoption of EJR 1160, it appears that the constitutional amendment sought to open judicial nominating commissions "all the way" with the exception of the deliberations of the commission.²

The Legislature in proposing the amendment to s. 11, Art. V, State Const., had before it the definition of the term "public records" for purposes of Ch. 119, F.S., Florida's Public Records Law.³ That definition includes all papers, letters or other

Mr. John W. Frost, II
Page Three

materials made or received pursuant to law or in connection with the transaction of official business by any agency.⁴ Under such a definition, the correspondence either prepared or received by your office in connection with the transaction of the commission's business would be a public record.

While the Constitution authorizes the adoption of uniform rules of procedure for judicial nominating commissions at each level of the court system, s. 11(d), Art. V, State Const., mandates that records of the commissions, except for their deliberations, must be open to the public. Such a constitutional requirement limits the rule-making authority of the commissions and cannot be altered or diminished by rule.

While s. III of the Uniform Rules requires that all information regarding applicants be open to the public, it does not provide for or require that all other information received by the commissions is confidential. You have not directed my attention to any provision in the rules which either defines what constitutes "records" of the judicial nominating commissions or provides that all documents, papers, etc., made or received by the commission, or a member thereof, while carrying out its duties are not subject to disclosure.

Correspondence between you and persons seeking to obtain applications for the vacant seat on the Second District Court of Appeal relates to the duties and functions of the judicial nominating commissions. Such correspondence made or received by the commission (or a member thereof) in carrying out those duties would, therefore, appear to constitute a record of the commission within the contemplation of s. 11(d), Art. V, State Const. Thus, I am of the opinion that the correspondence between you (or your office on your behalf) in your capacity as Chairman of the Second Judicial Nominating Commission and persons wishing to obtain an application, including the names of such persons, are records open to the public.

Sincerely,



Robert A. Butterworth
Attorney General

RAB/tjw

1 276 So.2d 25, 30 (Fla. 1973).

2 See, Tape, Judiciary Civil-Committee, Florida Senate, April 25, 1984; see also, Tape 2, Committee on Judiciary, Florida House of Representatives, April 5, 1984. House Joint Resolution originated as Recommendation 14 of the Article V Review Commission's Final Report. The official recommendation did not include closing the deliberations of the judicial nomination commission. While that provision was voted on favorably by the commission (12-10 vote), an affirmative vote of 14 was required for a recommendation. See, Staff Summary on PCB 38 (HJR 1160), Committee on Judiciary, House of Representatives, February 29, 1984.

3 See generally, Jenkins v. State, 385 So.2d 1356 (Fla. 1980) (constitutional amendment must be viewed in light of historical development of the decisional law extant at the time of the amendment's adoption and the intent of the framers and adopters); In re Advisory Opinion to Governor, 374 So.2d 959 (Fla. 1979); Plante v. Smathers, 372 So.2d 933 (Fla. 1979).

4 Section 119.011(1), F.S., defines "Public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The term was further defined by the Supreme Court of Florida in Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla. 1980), in which the court held that the definition included "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."

JUDGES

EFFECT OF JUDGE'S RESIGNATION WHILE
REMOVAL ACTION PENDING

To: Reubin O'D. Askew, Governor, Tallahassee

Prepared by: Betty Steffens, Assistant Attorney General

QUESTIONS:

1. Will acceptance of the resignation of Circuit Judge Stewart F. LaMotte affect his legal status?
2. Will such acceptance make any difference as to his pension and retirement rights?

SUMMARY:

Resignation from a judicial office is not effective until acceptance by the Governor. In view of the pending constitutionally created removal proceedings, it would be the preferable course to decline acceptance and avoid any intrusion into the judicial process. Under present Florida law, retirement benefits are not extinguished by single acts of resignation or removal from judicial office.

The answer to your first question is dependent upon the status of other proceedings potentially affecting Judge LaMotte's status. The Judicial Qualifications Commission (hereinafter commission) is a constitutionally created body, vested with the jurisdiction to investigate and recommend to the Supreme Court of Florida the removal of a judge from office. When such a recommendation is made by two-thirds of the members of the commission, the Supreme Court is empowered to order that the judge be disciplined by appropriate reprimand, removal from office, or involuntary retirement. Section 12(a) and (f), Art. V, State Constitution.

The commission has investigated and has by vote of two-thirds of its members recommended the removal from office of Stewart F. LaMotte. This recommendation was contained in a report to the Supreme Court by the commission as to its proceedings with respect to the matter. In an opinion issued January 4, 1977, the Supreme Court ordered the removal of Judge LaMotte from office with termination of compensation. The removal would become effective upon the opinion becoming final. On January 19, 1977, Judge LaMotte filed a petition for rehearing with the Supreme Court. As a result, the January 4 opinion cannot become final until the petition has been determined by the court. Since the court could modify or set aside its opinion upon rehearing, the present status of Stewart F. LaMotte, aside from consideration of his letter of resignation, is that he holds the office of circuit judge.

The effect of Judge LaMotte's letter should be viewed against constitutional provisions and relevant case law. Section 3, Art. X, State Const. provides:

Vacancy in office.—Vacancy in office shall occur upon the creation of an office, upon the death of the incumbent or his removal from office, resignation, succession to another office, unexplained absence for sixty consecutive days, or failure to maintain the residence required when elected or appointed, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term.

Vacancy in judicial office also occurs through removal or involuntary retirement by the Supreme Court and impeachment by the Legislature. Section 12, Art. V; s. 17, Art. III. Since these provisions fail to specifically mention voluntary retirement, it can be inferred that it is the intent of the Constitution to regard voluntary retirement from judicial office as a resignation.

Florida case law recognizes the rule that a mere letter of resignation is insufficient to create a vacancy in office. To be effective the resignation must be accepted by a competent authority whose acceptance may be oral, written, or performance of an official act which would ordinarily not be done unless a vacancy had occurred by resignation. *State ex rel. Jackson v. Crawford*, 79 So. 875 (Fla. 1918); *State ex rel. Gibbs v. Lunsford*, 192 So. 485 (Fla. 1939); *cf. State ex rel. Landis v. Heaton*, 132 Fla. 443, 180 So. 766 (1938); *see also Fla. Jur. Public Officers* s. 79.

Thus, submission of the resignation letter is ineffective absent oral or written acceptance or other manifestation such as action by you as Governor pursuant to s. 11, Art. V, State Const., to fill a vacancy in judicial office.

A similar case arose in Texas wherein impeachment proceedings by the State Senate were brought against a public officer, the Governor, who was pronounced guilty of the charges. In disallowing the Governor's attempt to resign the day before the official

judgment was rendered, the Texas Supreme Court held that where the Senate had acquired jurisdiction, under the circumstances it could not be deprived of its power to enter its judgment and disqualify him from holding further office. *Ferguson v. Maddox*, 263 S.W. 888 (Tex. 1925). Since the Supreme Court is presently conducting a removal proceeding in accordance with specific constitutional provisions, and to avoid any question of executive intrusion into judicial matters, it would appear to be the better course of judgment to decline acceptance of the resignation. See *In re Advisory Opinion to the Governor*, 276 So.2d 25 (Fla. 1973).

Your second question can be answered somewhat more easily. Section 121.091(5)(f), (g), and (h), F. S., provides:

(f) Any member who has been found guilty by a verdict of a jury, or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his employer, bribery in connection with the employment, or other felony specified in chapter 838, committed prior to retirement, or who has entered a plea of guilty or of *nolo contendere* to such crime, or any member whose employment is terminated by reason of his admitted commitment, aiding, or abetting of an embezzlement or theft from his employer, bribery, or other felony specified in chapter 838, shall forfeit all rights and benefits under this chapter, except the return of his accumulated contributions as of his date of termination.

(g) Any elected official who is convicted by the Senate of an impeachable offense shall forfeit all rights and benefits under this chapter, except the return of his accumulated contributions as of the date of his conviction.

(h) Any member who, prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or who has been found guilty by such court of violating any state law prohibiting strikes by public employees, shall forfeit all rights and benefits under this chapter, except the return of his accumulated contributions as of the date of his conviction.

Resignation is not one of the grounds for forfeiture of retirement rights and benefits as set forth in the above statute. Irrespective of whether the vacancy is created by resignation or removal under existing statutes Judge LaMotte's right to retirement benefits would be determined by the normal procedures employed by the Division of Retirement and would be based upon the criteria specified in the statute and rules administered by that agency. Judge LaMotte would be entitled to any benefits he has acquired the right to as a result of length of service, time of participation in the retirement system, and similar factors. However, if Judge LaMotte is subsequently prosecuted and found guilty of any charge enumerated in s. 121.091, F. S., his retirement benefits may be forfeited.

The Legislature, during the 1977 Session, should address this issue and enact corrective legislation to prevent a judge who has been removed by the Florida Supreme Court from receiving publicly funded retirement benefits. I do not believe that a judge who has created cause for removal by defrauding the public taxpayers should be in a posture to receive retirement benefits that are paid from public funds. I intend to recommend legislative amendments that will accomplish this purpose.

JUDICIAL NOMINATING COMMISSION

DUTIES TO NOMINATE AT LEAST THREE CANDIDATES FOR
JUDGESHIP—MAY GO OUTSIDE CIRCUIT TO FIND
QUALIFIED CANDIDATES

To Reubin O'D. Askew, Governor, Tallahassee

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Is a judicial nominating commission required or authorized to go outside the circuit to find qualified nominees when it certifies three candidates as nominees for a judicial vacancy pursuant to Art. V, s. 11, State Const., and two of the nominees would not accept the commission if appointed and the commission has found there are no other qualified candidates in the circuit?

2. If the answer to question 1 is negative, would the certification of only one candidate in fact violate the provision of Art. V, s. 11, State Const., requiring the commission to submit "not fewer than three persons"?

SUMMARY:

Under Art. V, s. 11, State Const., it is the duty of a judicial nominating commission to submit to the Governor the names of three nominees who are qualified for, and willing to accept an appointment to, the judicial post for which the nominations are made. Attorneys residing outside the circuit in which the vacancy exists who are willing to change their residence to that circuit, if appointed, may apply for the position and may be nominated by the judicial nominating commission.

Under Art. V, s. 11, State Const., the Governor is required to fill a vacancy in judicial office by appointing "one of not fewer than three persons nominated by the appropriate judicial nominating commission." A "nomination" is by definition "the formal presentation of the name of a candidate for the office to be filled." (Emphasis supplied.) Sturgis, *Standard Code of Parliamentary Procedure*, Ch. 11, p. 71. And, ordinarily, the consent of the person to his or her candidacy is obtained before his or her name is placed in nomination.

A judicial nominating commission has the constitutional duty to supply the Governor with the names of at least three nominees or candidates for appointment to the judicial office in which there is a vacancy. While the Constitution does not expressly so provide, it seems clear that no person should be nominated by the commission unless he or she has, at least, consented to becoming a candidate for appointment to that judicial office and would accept the commission if appointed. As stated in *In re Advisory Opinion to Governor*, 276 So.2d 25, 29 (Fla. 1973), which was concerned with this same constitutional provision,

In construing a constitutional provision, the words should be given reasonable meaning according to the subject matter, but in the framework of contemporary societal needs and structure. Such light may be gained from historical precedent, from present facts, or from common sense. *State ex rel. West v. Gray*, 74 So.2d 114, p. 116 (Fla. 1954).

And as a matter of plain ordinary common sense, a judicial nominating commission should not submit the names of nominees to the Governor without first making sure that such persons are not only qualified to perform the duties of the office but are also willing to accept the commission if appointed by the Governor. In no other way can the Governor be assured of having a choice of at least three persons who are qualified for and willing to accept the office, as contemplated by the Constitution. See *In re Advisory Opinion*, *supra*, 276 So.2d at 29, pointing out that the Constitution "confers upon the Governor the express power to make the final and ultimate selection by appointment."

The advisory opinion referred to above also relied on the well-settled rule of statutory and constitutional construction that intent may be ascertained by examining the purpose sought to be accomplished or the evils to be prevented or remedied, and pointed out that:

The purpose of the judicial nominating commission is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge. When the commission has completed its investigation and reached a conclusion, the persons meeting the qualifications are nominated. In this respect the commissioners act in an advisory capacity to aid the Governor in the conscientious exercise of this executive appointive power. (Emphasis supplied.) [(See) 276 So.2d at 30.]

It was said also that the judicial nominating commissions were created "to screen applicants for judicial appointments within their respective jurisdictions and to nominate

the three best qualified persons to the Governor for his appointment." See 276 So.2d at 29. These statements indicate that the commission should nominate only *applicants* for the position; however, as noted above, in any event a judicial nominating commission may not properly submit as nominees the names of persons who, although qualified, have not indicated their willingness to accept the post if appointed.

There is nothing in the Constitution or statute which either expressly or by necessary implication prohibits the acceptance of applications from attorneys who reside outside the circuit. While a circuit judge must be an elector *of the state* and must reside within the territorial jurisdiction of the court, Art. V, s. 8, State Const., there is no constitutional requirement that he or she must have resided in the circuit for any particular length of time prior to the appointment or election. And, as noted in a letter to Judge Robert H. Matthews dated July 13, 1972, this constitutional provision and applicable statutory provisions

... have been administratively interpreted as establishing a residential qualification for *holding* the office but not a condition precedent to qualifying to become a *candidate* for the office. This interpretation is in accord with the decisions of the Florida Supreme Court with respect to the requirement in the oath of office that a candidate is qualified for the office which he seeks. See Davis ex rel. Taylor v. Crawford, 116 So. 41 (Fla. 1928); State ex rel. Knott v. Haskell, 72 So. 651 (Fla. 1916); State ex rel. Fair v. Adams, 139 So. 2d 879 (Fla. 1962); Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966).

073-348—September 17, 1973

SUNSHINE LAW

APPLICABILITY TO JUDICIAL NOMINATING COMMISSIONS

To: *John J. Blair, State Attorney, Sarasota*

Prepared by: *Jan Dunn, Assistant Attorney General*

QUESTION:

Are judicial nominating commissions subject to the Sunshine Law, §286.011, F. S.?

SUMMARY:

Judicial nominating commissions are not subject to the Sunshine Law.

Judicial nominating commissions are now official bodies set up under the Florida Constitution. Revised Art. V, §11. These commissions are charged with the duty and responsibility of recommending or "nominating" for gubernatorial appointment persons qualified and eligible to fill vacancies in judicial offices in this state.

The judicial nominating commissions are constitutional bodies falling under the executive branch of government. The legislature has no control over them. In *Times Publishing Co. v. Williams*, 222 So.2d 470 (2 D.C.A. Fla., 1969), the court stated that the Sunshine Law was intended to apply to "every board or commission of the state . . . over which [the legislature] has dominion and control." This would exclude judicial nominating commissions. "It has been held that the separation of powers provision [Art. II, §3, State Const.], prohibits the Legislature from applying the Sunshine Law to members of the Executive [or judicial] branch of the state government while exercising their constitutional duties in their capacities as members of that branch." Letter dated January 17, 1973.

I do not mean to say that the governor, the executive branch, or an administrative-executive body can never fall under the purview of the Sunshine Law. There may be circumstances where their exercise of duties given them by the legislature would bring an "executive" body under the Sunshine Law. For example, as stated in a letter dated January 17, 1973, ". . . when the Governor and Cabinet are sitting in their capacity as a board created by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources, they are subject to the Government in the Sunshine Law." Attorney General Opinion 072-400 says that a regulatory board created by the legislature although acting in an administrative or executive capacity is covered by the Sunshine Law. The facts that the commissions are created by the Constitution and are performing constitutional duties are controlling.

Your question is answered in the negative.

072-176—May 19, 1972

RESIGN-TO-RUN LAW

APPLICABILITY OF RESIGN-TO-RUN LAW TO JUDICIAL COUNCIL
MEMBER OR APPOINTED ATTORNEY

JUDICIAL NOMINATING COMMISSION

COMMISSION MEMBER MAY RUN FOR JUDICIAL OFFICE

To: *Jere Tolton, Okaloosa County Attorney, Fort Walton Beach*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTIONS:

1. Is the resign-to-run law applicable to a member of the Florida Judicial Council or the appointed attorney for a board of county commissioners?

2. Do the prohibitions of §20(c)(6), revised Art. V, respecting the holding of judicial office by a member of a judicial nominating commission, apply only to the office of a justice or judge of a court of this state?

3. Do these provisions prohibit a former member of a judicial nominating commission from running for a judicial office during the two-year period following his service on the commission?

SUMMARY:

The resign-to-run law does not apply to a member of the Florida Judicial Council or to a county attorney employed by the county commissioners under §125.01, F. S.

The term "judicial office," as used in §20(c)(6) of revised Art. V—prohibiting a member of a judicial nominating commission from holding a judicial office or being appointed to such an office while he is a member of such a commission and for two years thereafter—means the office of justice or judge of a court of this state.

The prohibition in question applies only to an *appointment* to judicial office and does not prohibit a member of a judicial nominating commission from qualifying for and running for *election* to judicial office.

Under §43.15, F. S., the members of the Judicial Council of Florida are appointed by the governor and apparently serve without compensation. Section 99.012(5), *id.*, provides, in effect, that a member of an appointive board or authority who serves without salary is not required to resign in order to run for another office. It appears, therefore, that the first portion of your first question should be answered in the negative.

The answer to the question of whether you would be required to resign as county attorney in order to run for office would depend upon whether you are a county officer whose term would overlap that of the office to which you aspire. I have recently ruled in AGO 071-347 that a county prosecuting attorney who is employed by the county commissioners under the authority of §125.01(2), F. S., is not an "officer" within the purview of the resign-to-run law. If this is your situation, your question in this respect is answered also in the negative. If not, please resubmit your request, together with the facts and the law applicable to your position.

Answering your second question: Section 20(c)(6) of revised Art. V reads as follows:

No justice or judge shall be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. No member shall be eligible for appointment to state judicial office so long as he is a member of a judicial nominating commission and for a period of two years thereafter. . . .

When all provisions of this section are read together, it seems clear that the term "judicial office" was intended to include only justices and judges of the courts of this state. It is true that a state attorney is sometimes referred to as an officer or arm of the court, see *Smith v. State*, Fla. 1957, 95 So.2d 525; but this is not the equivalent of a "judicial officer." It is worthy of note that Ch. 105, F. S., providing for nonpartisan elections for judicial officers, defines the terms judicial officers and judicial office to include only the justices and the judges of the courts of this state and the offices served by them. See §105.011. And, to be consistent with that definition, it must be concluded that the term judicial officer within the purview of §20(c)(6) means only a justice or a judge of a court of this state.

Answering your third question: You are apparently serving as a member of a judicial nominating council created by Executive Order Number 71-40 to nominate for gubernatorial appointment persons qualified and eligible to fill vacancies in judicial offices in this state. It is a strict rule of construction that statutes are presumed to be intended to operate prospectively and should not be construed as having a retrospective effect unless their terms clearly show a legislative intention that they should so operate. See *Heberle v. P.R.O. Liquidating Co.*, Fla. 1 D.C.A. 1966, 186 So.2d 280; *Schonfield v. City of Coral Gables*, Fla. 3 D.C.A. 1954, 174 So.2d 453. And, as noted in *Mugge v. Warnell Lumber & Veneer Co.*, Fla. 1909, 50 So. 645, the rules used in construing statutes are in general applicable in construing constitutions.

It is not necessary, however, to decide whether the constitutional prohibition in question would apply to a member of the advisory nominating group upon which you are serving, as your question is concerned with your eligibility to *seek election* as a judge of a court of this state; and the constitutional provision in question prohibits only an "*appointment* to state judicial office so long as he is a member of a judicial nominating commission and for a period of two years thereafter. . . ." (Emphasis supplied.)

072-177—May 19, 1972

RESIGN-TO-RUN LAW

COUNTY COMMISSIONER IN REDISTRICTED COUNTY

To: *W. L. Fitzpatrick, Judge, Circuit Court, Wewahitchka*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

When a county commissioner of a redistricted county was elected in 1970 from one district for a four-year term, is he required to resign as commissioner for that district in order to seek election at the 1972 General Election as commissioner from another district for a full four-year term?

SUMMARY:

A county commissioner of a redistricted county who was elected in 1970 from one district for a four-year term should comply with the

551 So.2d 1205
Supreme Court of Florida.

In re ADVISORY OPINION TO THE GOVERNOR.

No. 74930. | Nov. 9, 1989.

Questions were propounded by the Governor to the Justices of the Supreme Court relating to Governor's executive powers and duties under constitutional article governing filling of vacancies in judicial office. The Justices of the Supreme Court were of the opinion that: (1) where there were three vacancies in judicial office, the judicial nominating commission must submit the names of nine nominees, three for each vacancy, and (2) Governor was not required to fill the three vacancies until the commission had submitted the nine names.

Questions answered.

West Headnotes (2)

[1] **Judges** ⇌ Vacancy in Office

Judicial nominating commission is required to submit to Governor three names for each vacancy in judicial office so that Governor can perform his duty of appointment; where there are three vacancies, the commission must submit the names of nine nominees, three for each vacancy. West's F.S.A. Const. Art. 4, § 1(c); Art. 5, § 11.

1 Cases that cite this headnote

[2] **Judges** ⇌ Vacancy in Office

Governor is not required to fill three vacancies from the nominations of a single nominating commission until the commission has submitted nine names, three for each vacancy, and the 60-day time limitation for making the appointments does not begin to run until commission has submitted the nine names. West's F.S.A. Const. Art. 4, § 1(c); Art. 5, § 11.

1 Cases that cite this headnote

Attorneys and Law Firms

*1206 Peter M. Dunbar, Gen. Counsel, Tallahassee, for Bob Martinez, Governor of the State of Fla.

Opinion

Honorable Bob Martinez

Governor of Florida

The Capitol

Tallahassee, Florida 32301

Dear Governor Martinez:

We have the honor of responding to your request for our opinion as to the interpretation of a constitutional provision affecting your executive powers and duties. Your request was made and our opinion is provided as authorized by article IV, section 1(c) of the Florida Constitution.

Your letter requesting our opinion, omitting the formal parts, reads as follows:

“Pursuant to Article IV, Section 1(c) of the Constitution of the State of Florida, your opinion is requested as to the interpretation of my executive duties and responsibilities as chief executive under Article V, Section 11 of the Constitution of the State of Florida. This Court has previously determined that such a request is within the purview of Article IV, Section 1(c) of the Florida Constitution, by responding to a similar request. *In re Advisory Opinion to the Governor*, 276 So.2d 25 (Fla.1973).

“It is my constitutional duty to fill by appointment vacancies in judicial office. Section 11 of Article V of the Florida Constitution provides:

(a) The governor shall fill each vacancy on the supreme court or on a district court of appeal by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of three persons nominated by the appropriate judicial nominating commission.

(b) The Governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

(d) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within *1207 the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring. Except for deliberations of the judicial nominating commissions, the proceedings of the commissions and their records shall be open to the public.

“The language of the provision confers upon the Governor the authority to make judicial appointments. Additionally, the language provides that the appropriate judicial nominating commission nominate not fewer than three persons for each judicial vacancy from whom the Governor shall make his appointment.

“Since I assumed the office of governor in 1987, numerous judicial vacancies have occurred, and I have performed my constitutional duty of appointment on 119 occasions. On each of these occasions, the appropriate judicial nominating commission, except the Fifteenth Judicial Nominating Commission, has provided me with the names of three persons for each judicial vacancy. On August 29, 1989, the Fifteenth Judicial Nominating Commission nominated the six same persons for each of three judicial vacancies. The Commission's action appears to contravene the requirements of Article V, Section 11, and results in substantially diminishing my authority to make judicial appointments by reducing the number of nominees from which I may select.

“I have raised my concerns with the Chairman of the Fifteenth Judicial Nominating Commission and with the Judicial Nominating Commission Procedures Committee which, in response, adopted the following motion:

Although the JNC's are autonomous and can create their own rules, it is our interpretation that sending the six same names for each of the three positions complies with the Uniform Rules of Procedures for Circuit Judicial Nominating Commissions.

"I can find no provision in the *Uniform Rules of Procedure for Circuit Court Judicial Nominating Commissions* that permits judicial nominating commissions, when there are three judicial vacancies, to provide me with the names of six nominees rather than the names of nine nominees as required by the Florida Constitution. Like the constitutional provision, the rules provide that the judicial nominating procedure begins upon the occurrence of "a vacancy," and results in "no less than three nominees from the list of applicants who meet the requirement of the Florida Constitution and other legal requirements for the judicial office." Section V., *Uniform Rules of Procedure for Circuit Judicial Nominating Commissions*. In any event, it is clearly impermissible for judicial nominating commissions to interpret the rules in a manner which conflicts with the requirements of Article V, Section 11.

"In view of the provisions of the Constitution which I have heretofore related and the refusal of the Fifteenth Circuit Judicial Nominating Commission to provide me with the names of additional nominees, I am in doubt as to whether I, as Governor, must fill the three vacancies in the fifteenth judicial circuit court from the six same names provided to me by the Fifteenth Circuit Judicial Nominating Commission and, if not, what action I must take to faithfully perform my constitutional duty to fill by appointment the vacancies in these judicial offices. I have the honor, therefore, to request your written opinion on the following questions.

(1) Is the governor required to fill vacancies in judicial office from the names of persons provided to him by the appropriate judicial nominating commission, if the judicial nominating commission provides him with the six same names for three judicial vacancies rather than not fewer than three persons for each judicial vacancy?

(2) If the answer to questions (1) is in the negative, must the governor reject the entire six names provided to him *1208 by the appropriate judicial nominating commission, make only two appointments and request that three additional names be provided for the third vacancy, or take other appropriate action as directed by this Court?"

We now proceed to address your questions.

As is required by Florida Rule of Appellate Procedure 9.500(b), we determined that your request was within the purview of article IV, section 1(c). On October 26, 1989, the Chief Justice sent you a preliminary response to your request, advising you of the opinion of the Justices on your questions and advising you that a formal written opinion would follow. The Chief Justice's letter to you, omitting the formal parts, reads as follows:

"This is in response to your letter received this date requesting an advisory opinion from the Supreme Court pursuant to Article IV, Section 1(c) of the Florida Constitution.

"Based on the need to resolve your questions expeditiously, the court has decided, as authorized by Article IV, Section 1(c), to dispense with hearing from interested persons and to provide our answers without delay.

"The questions upon which you have requested our opinion are as follows:

(1) Is the governor required to fill vacancies in judicial office from the names of persons provided to him by the appropriate judicial nominating commission, if the judicial nominating commission provides him with the six same names for three judicial vacancies rather than not fewer than three persons for each judicial vacancy?

(2) If the answer to question (1) is in the negative, must the governor reject the entire six names provided to him by the appropriate judicial nominating commission, make only two appointments and request that three additional names be provided for the third vacancy, or take other appropriate action as directed by this Court?

“With regard to question (1), the Court answers in the negative and advises you that, in the case of three vacancies, the constitution and applicable statutes and rules contemplate that there will be nine nominees submitted, three for each vacancy.

“With regard to question (2), the Court advises you that, in the event of three vacancies to be filled from the nominations of a single nominating commission, the Governor need not make any appointments until the commission has submitted nine names, three nominees for each vacancy.

“The Court will issue a formal advisory opinion on your questions within the next week or so. But the Court has authorized me to advise you of our opinion on your questions in the foregoing fashion due to the extreme time constraints under which we are operating.”

On October 25, 1989, the Judicial Nominating Commission for the Fifteenth Judicial Circuit filed with us a petition for a writ of mandamus, seeking to have us require that you make appointments for three circuit court vacancies from among six nominees submitted to you.

In its petition, the nominating commission pointed out that the Uniform Rules of Procedure for Judicial Nominating Commissions requires nominating commissions to select nominees by majority vote. In this case, the commission said, only six nominees had received majority approval for their nominations. The commission also argued that by nominating six persons, the commission had complied with the language of article V, section 11 and of the uniform rules, mandating the nomination of at least three persons. The fact that there were three vacancies made no difference, the commission argued, because “[a]fter filling the first vacancy, the Governor will have five nominees from which to fill the second vacancy, and then four nominees from which to fill the third vacancy.” The commission argued that, based on the foregoing facts, it was your duty to make the appointments from among the six nominees. We denied the petition, thus implicitly rejecting the commission's view. *Judicial Nominating Commission for the Fifteenth *1209 Judicial Circuit v. Martinez*, No. 74,905 (Fla. Oct. 26, 1989).

Having considered the commission's mandamus petition, we were familiar with the commission's position and the arguments in support of it when your request for an advisory opinion arrived on October 26. We were also aware of the public need to fill the judicial vacancies in a timely fashion. With the benefit of the legal arguments presented in the petition for mandamus and the suggested position advanced in your letter, we felt we were fully advised in the premises of this issue. We accordingly concluded, in view of the time constraints, that it would be appropriate for us to respond to your request without delay and without further briefing by interested persons. This expedited procedure is authorized by article IV, section 1(c), if, in the Court's judgment, “the delay would cause public injury.”

[1] As is pointed out in your request, article V, section 11(b) provides, with respect to “each vacancy,” that the Governor is to appoint “one of not fewer than three persons nominated by the appropriate judicial nominating commission.” The constitutional language thus clearly requires that the nominating commission submit three nominees for each vacancy. There is no need to determine whether the rules of the nominating commission, properly interpreted, authorize a different procedure because it is beyond question that no such rule can prevail over the clear, unambiguous language of the constitution.

[2] We therefore confirm and ratify the informally provided answers previously given to you in the Chief Justice's letter of October 26, 1989, and advise you as follows: With regard to question (1), it is our opinion that the constitution requires the nominating commission to submit three names for each vacancy. With regard to question (2), without venturing to advise you as to your course of action, the Court advises you that, in the case of three vacancies to be filled from the nominations of a single nominating commission, you need not make any appointments until the commission has submitted nine names, three for each vacancy, and that the sixty-day time limitation for making the appointments does not begin to run until the commission has submitted nine names.

Very respectfully,

Raymond Ehrlich

Chief Justice
Ben F. Overton

Parker Lee McDonald

Leander J. Shaw

Stephen H. Grimes

Justices

ROSEMARY BARKETT and GERALD KOGAN, JJ., did not participate in this decision.

Parallel Citations

14 Fla. L. Weekly 563

Florida Attorney General Advisory Legal Opinion

Number: AGO 96-04

Date: January 11, 1996

Subject: Judicial Nominating Commission, submission of nominees

V. Ted Brabham, Jr., Chair
Fifteenth Judicial Circuit Nominating Commission
322 Banyan Boulevard
West Palm Beach, Florida 33401

RE: JUDICIAL NOMINATING COMMISSIONS--CIRCUIT COURTS--JUDGES--COURTS--GOVERNOR--authority of nominating commission to withdraw names certified to the Governor; ability to supplement list and advise Governor of changed circumstances; ability of Governor to combine separate lists certified for two circuit court vacancies. Art. V, s. 11, State Const.

Dear Mr. Brabham:

On behalf of the Fifteenth Judicial Circuit Nominating Commission you ask substantially the following questions:

(1) Does a judicial nominating commission have the authority to withdraw names certified to the Governor as nominees for a judicial vacancy on the circuit court?

(2) May the names on separate lists certified by a judicial nominating commission for two circuit court vacancies be combined for the Governor's consideration?

In sum:

(1) While a judicial nominating commission does not have the authority to withdraw the names certified to the Governor, the commission may supplement that list with additional names and advise the Governor of any changed circumstances regarding the certified nominees at any time prior to the Governor's appointment to fill the vacancy.

(2) The names on separate lists certified by the judicial nominating commission for two circuit court vacancies may be combined for consideration by the Governor.

Question One

Article V, section 11(b) and (c), Florida Constitution, provides:

"(b) The Governor shall fill each vacancy on a circuit court by appointing . . . one of not fewer than three persons nominated by the appropriate judicial nominating commission. . . .

(c) The nominations shall be made within thirty days from the occurrence of a vacancy unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him."

This office has been advised that the Judicial Nominating Commission for the Fifteenth Judicial Circuit (JNC) certified a list of three nominees for a vacancy on the circuit court for the Fifteenth Judicial Circuit on November 14, 1995. A board of independent inquiry was asked by the Governor to examine allegations that the JNC's choices were influenced by political considerations rather than the nominees' qualifications. A question has been raised as to whether the JNC may withdraw the list certified to the Governor on November 14, 1995, and resubmit a new list of nominees.

Article V, section 11(b) and (c), Florida Constitution, makes no provision for the withdrawal of a certified list of nominees. Rather the constitutional provision contemplates that a JNC will certify a list of nominees to the Governor within thirty days (or 60 days, if the Governor extends the period). No provision is made for the JNC to withdraw names previously certified. To allow a JNC to withdraw a name previously submitted would not conform to the procedure set forth in Article V, section 11.

The constitutional provision, however, does not limit the number of names to be submitted by the JNC, but rather requires that the JNC submit "not fewer than three persons" for consideration. The JNC has complied with this constitutional mandate. Nothing, however, precludes the JNC from submitting additional names to the Governor at any time prior to the Governor's appointment to fill the vacancy. Moreover, it would appear to be within the scope of the JNC's duties and responsibilities to advise the Governor of information received by the JNC subsequent to certification that would affect the qualifications of a nominee.[1]

The Governor would have the authority to fill the vacancy by appointing an individual from any of the nominees provided by the JNC. While the Governor may reject those nominees who do not meet the qualifications for judicial candidates, the constitution contemplates that the Governor will fill the vacancy from the nominees submitted by the JNC.[2]

Accordingly, I am of the opinion that while the JNC does not have the authority to withdraw names certified to the Governor, nothing precludes the commission from supplementing a list with additional names at any time prior to the Governor's appointment to fill a vacancy.

Question Two

This office has been advised that there are two judicial vacancies in the Fifteenth Judicial Circuit. Two separate lists were sent to the Governor, on November 14, 1995, and November 29, 1995, respectively. A question has been raised as to whether the two lists may be combined so that the Governor may fill the vacancies from any name on the combined lists.

The Supreme Court of Florida, in considering Article V, section 11, Florida Constitution, has stated:

"The purpose of the judicial nominating commission is to take the judiciary out of the field of political patronage and provide a method of checking the qualifications of persons seeking the office of judge. When the commission has completed its investigation and reached a conclusion, the persons meeting the qualifications are nominated. In this respect the commissioners act in an advisory capacity to aid the Governor in the conscientious exercise of his executive appointive power. [3]

It is the Governor who is constitutionally charged with the responsibility of filling judicial vacancies. The JNCs and those who appoint their members must recognize that they act to assist the Governor in performing this function. Manipulation of the process of selecting nominees in an attempt to influence the appointment of a particular individual nominee constitutes a violation of the constitutional scheme and a usurpation of the Governor's appointment power which should not be tolerated.

In cases where a judicial nominating commission is considering more than one vacancy, The Supreme Court of Florida in *In re Advisory Opinion to the Governor*, [4] has stated that the Governor is not required to fill the vacancies until the commission has submitted three names for each vacancy. Thus, the Court held that the commission was required to submit nine names to the Governor for three vacancies and that the sixty days in which the Governor was to make his decision did not begin to run until he received the nine names.

While the Court's opinion makes it clear that nine names were required to be submitted for three vacancies, it did not state that those names must be submitted on separate lists. Moreover, as this

office noted in Attorney General Opinion 93-87, nothing in the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions mandates that the names of nominees for multiple judicial vacancies be submitted on separate lists.[5] In fact, the rules require that the nominees not be ranked or listed in such a manner as to indicate partiality or preference by the commission. Thus, this office stated in Attorney General Opinion 93-87 that the submission of separate lists for multiple vacancies may be construed to violate the Uniform Rules. This office, therefore, concluded that where there are two or more circuit court vacancies within a judicial circuit, a single list for the two vacancies may be submitted, provided that the number of nominees contained on the list is equal to at least three for each vacancy.

In an analogous case, the Supreme Court of Florida in *State v. Kiesling*[6] held that the nominating council for the Public Service Commission could not submit separate lists for each vacancy but rather should prepare one list from which the Governor could fill all vacancies, stating that "[b]y submitting separate lists the [Nominating] Council tried to restrict the Governor's appointing authority." In concluding that the nominating council had acted inappropriately, the Court determined that "the Nominating Council . . . usurped its authority by trying to restrict the Governor's statutory power to appoint." [7]

In light of the above, I am of the opinion that the names on separate lists certified by the Judicial Nominating Commission on November 14, 1995, and on November 29, 1995, may be combined for consideration by the Governor.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tall

[1] See *Advisory Opinion to the Governor*, 276 So. 2d 25, 30 (Fla. 1973). Cf. *Spector v. Glisson*, 305 So. 2d 777, 778 (Fla. 1974) (one purpose of constitutional provision for use of nominating commissions is to place restraint on purely political appointments without an overriding consideration of qualification and ability).

[2] See, e.g., Art. V, s. 8, Fla. Const. (in order to be eligible for office as a circuit court judge, an individual must be an elector of the state, must reside in the territorial jurisdiction of the court, shall not be seventy years of age or older, and must have been a member of The Florida Bar for the preceding five years).

[3] 276 So. 2d at 30.

[4] 551 So. 2d 1205, 1206 (1989).

[5] See s. V of the Uniform Rules of Procedure for Circuit Judicial Nominating Commissions (Uniform Rules).

[6] 632 So. 2d 601, 604 (Fla. 1994).

[7] *Id.*

CEO 78-57 -- September 8, 1978

CONFLICT OF INTEREST

**MEMBER OF JUDICIAL NOMINATING COMMISSION CONTRIBUTING TO JUDICIAL
CAMPAIGN**

To: (Name withheld at the person's request.)

Prepared by: Phil Claypool

SUMMARY:

No provision of the Code of Ethics for Public Officers and Employees would prohibit a member of a judicial nominating commission from contributing to a judicial campaign under any circumstances. Relative to the propriety of a judicial candidate accepting a contribution from a member of a nominating commission, it is suggested that the petitioner refer to the Code of Judicial Conduct and the Judicial Qualifications Commission. The Florida Bar should be contacted for information as to whether any issues are raised under the Code of Professional Responsibility.

QUESTION:

Does the Code of Ethics for Public Officers and Employees prohibit a member of a judicial nominating commission from contributing to a judicial campaign?

Your question is answered in the negative.

We have examined the provisions of the Code of Ethics for Public Officers and Employees, part III, Ch. 112, F. S., and find no provision which would prohibit a member of a judicial nominating commission from contributing to a judicial campaign under any circumstances. Insofar as your question relates to the propriety of a judicial candidate accepting a contribution from a member of a judicial nominating commission, we must refer you to the Code of Judicial Conduct and to the Judicial Qualifications Commission. As to whether any issues are raised under the Code of Professional Responsibility, we suggest that you contact The Florida Bar.

147 So.3d 641
District Court of Appeal of Florida,
First District.

David P. TROTTI, Appellant,

v.

Ken DETZNER, Secretary of State, Appellee.

No. 1D14-3667. | Sept. 17, 2014.

| Rehearing Denied Sept. 29, 2014.

Synopsis

Background: Judicial candidate filed emergency petition for writ of mandamus, seeking to compel Secretary of State to accept qualifying papers for judicial vacancy. The Circuit Court, Leon County, George S. Reynolds, III, J., 2014 WL 4401104, denied writ, finding that judicial seat should be filled by gubernatorial appointment rather than by election. Judicial candidate appealed.

[Holding:] The District Court of Appeal, Roberts, J., held that judicial vacancy was required to be filled by gubernatorial appointment, rather than by election.

Affirmed.

Padovano, J., filed dissenting opinion.

West Headnotes (4)

[1] **Judges**

☞ Vacancy in office

Judicial vacancy created by resignation of judge, tendered before qualifying period for general election but with an effective date one business day before end of judge's term, was required to be filled by gubernatorial appointment, rather than by election; even though resignation had future effective date, judicial vacancy occurred prior to commencement of statutory qualifying period when Governor accepted judge's resignation, and physical vacancy would occur during judge's term. West's F.S.A. Const. Art. 5, § 11(b);

West's F.S.A. §§ 100.032, 100.061, 100.041, 105.031(1).

Cases that cite this headnote

[2] **Mandamus**

☞ Nature and existence of rights to be protected or enforced

Mandamus may not be used to establish the existence of a right, but only to enforce a right already clearly and certainly established in the law.

Cases that cite this headnote

[3] **Judges**

☞ Vacancy in office

When a judicial vacancy is created prior to the commencement of the qualifying period, the vacancy is required to be filled by gubernatorial appointment; whereas a vacancy that occurs after the election process begins should be filled by election. West's F.S.A. Const. Art. 5, § 11(b); West's F.S.A. §§ 100.032, 100.061, 105.031(1).

Cases that cite this headnote

[4] **Judges**

☞ Vacancy in office

A judicial vacancy occurs when a letter of resignation is received and accepted by the Governor, even if the resignation, has a future effective date. West's F.S.A. Const. Art. 5, § 11.

Cases that cite this headnote

Attorneys and Law Firms

*642 David P. Trotti, pro se; Nick James and Christopher W. LoBianco of Hunt, Green & James, Jacksonville, for Appellant.

J. Andrew Atkinson, General Counsel, Ashley E. Davis and Thomas D. Winokur, Assistant General Counsels, Tallahassee, for Appellee.

John S. Mills and Andrew D. Manko of The Mills Firm, Tallahassee, for Intervener, Bruce R. Anderson, Jr.

Opinion

ROBERTS, J.

The appellant, David Trotti, seeks review of an order of the Second Judicial Circuit in and for Leon County that denied his emergency petition for writ of mandamus, which sought to compel the appellee Secretary of State (the Secretary) to accept his qualifying papers for a judicial vacancy in Group 12 of the Fourth Judicial Circuit Court.¹ On appeal, the appellant argues that the circuit court erred in holding that the judicial seat should be filled by gubernatorial appointment rather than by election. We disagree and affirm.

The judicial seat at issue here is currently occupied by Circuit Judge Donald R. Moran, Jr. On March 26, 2014, Judge Moran tendered a letter of resignation to Governor Rick Scott in which he wrote that his resignation was to be “effective the last day of my term in January 2015.” On March 31, 2014, Judge Moran sent a second letter to Governor Scott clarifying that his specific date of resignation was to be Friday, January 2, 2015. January 2, 2015, is three calendar days (one business day) before Judge Moran’s term was due to expire on January 5, 2015. See Art. V, § 10(b)(3)b., Fla. Const.; § 100.041(4), Fla. Stat. (2014).

On April 2, 2014, the appellant filed a Form DS–DE 9 with the Division of Elections (the Division) indicating his intention *643 to run for election for the seat at issue.² On April 3, 2014, the Division acknowledged receipt of the appellant’s paperwork and placed him on the Division’s list of active candidates. The appellant was listed as a candidate for Group 12 on the Secretary’s website on April 3, 2014. Although the appellant filed his preliminary paperwork in early April, the statutory qualifying period for the seat was set to begin at noon on April 28, 2014, and end at noon on May 2, 2014. See §§ 105.031(1), 100.061, & 100.032, Fla. Stat. (2014).

On April 10, 2014, Governor Scott sent Judge Moran a letter accepting his resignation. On April 25, 2014, the appellant received an email from the Division informing him that Judge Moran had submitted his resignation and accordingly Group 12 would be fulfilled by gubernatorial appointment rather than election. The Division advised the appellant to withdraw his candidacy or apply for candidacy in a different group.

The appellant filed a petition for mandamus seeking to compel the Secretary to accept his qualifying papers for Group 12 of the Fourth Judicial Circuit.³ On August 1, 2014, the circuit court entered an order denying the petition. The order found that because Judge Moran resigned prior to the start of the qualifying period and a physical vacancy would occur between the effective date of his resignation and the start of the following term, his seat should be filled by gubernatorial appointment. The court recognized the appellant’s reliance on *Spector v. Glisson*, 305 So.2d 777 (1974), for the assertion that Florida law generally favors elections. However, the court found that *Spector*’s holding had been limited to a set of facts in which “a judge resigns effective at a future date and *no interim vacancy will exist*” between the effective resignation date and the start of the new term. See *Pincket v. Harris*, 765 So.2d 284, 287 (Fla. 1st DCA 2000) (citing *In re Advisory Op. to the Gov. (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla.1992)). We affirm the order denying mandamus relief.

[1] [2] “Mandamus may not be used to establish the existence of a right, but only to enforce a right already *clearly and certainly* established in the law.” *Fla. League of Cities v. Smith*, 607 So.2d 397, 400 (Fla.1992) (emphasis added). The appellant failed to show that the Secretary had a clear legal duty to accept his qualifying papers and fees and qualify him for Group 12 in the 2014 election as the law is clear that the vacancy created by Judge Moran’s resignation must be filled by appointment.

Article V, section 11(b), of the Florida Constitution vests the Governor with the power to fill judicial vacancies via appointment:

The governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment, one of not fewer than three persons nor more than six persons nominated by the appropriate judicial nominating commission. An election shall be held to fill *644 that judicial office for the term of office

beginning at the end of the appointed term.

[3] The Florida Supreme Court has provided that when a vacancy is created prior to the commencement of the qualifying period, the vacancy is required to be filled by gubernatorial appointment. See *Advisory Op. to the Gov. re Sheriff & Judicial Vacancies Due to Resignations*, 928 So.2d 1218, 1220–21 (Fla.2006). Whereas a vacancy that occurs after the election process begins should be filled by election. See *Advisory Op. to the Gov. re Judicial Vacancy Due to Resignation*, 42 So.3d 795, 797 (Fla.2010) (“[W]hen a vacancy occurs in the county or circuit courts before the qualifying period for the seat commences, the vacancy should be filled by appointment, but once the election process begins, such vacancy should be filled by election.”).

[4] Thus, the salient question to answer here is when the vacancy occurred in relation to the election process. A judicial vacancy occurs when a letter of resignation is received and accepted by the Governor, even if the resignation, as here, has a future effective date. See *In re Advisory Op. to the Gov. (Judicial Vacancies)*, 600 So.2d 460, 462 (Fla.1992) (“When a letter of resignation to be effective at a later date is received and accepted [by the Governor], a vacancy in that office occurs and actuates the process to fill it.”). See also *Sheriff & Judicial Vacancies*, 928 So.2d at 1220; *Spector*, 305 So.2d at 780. Thus, when Governor Scott accepted Judge Moran’s resignation on April 10, 2014, the vacancy occurred.

“In order to promote consistency in the process of filling judicial vacancies, we identified the beginning of the statutory qualifying period as a fixed point to mark the commencement of the election process.” *Advisory Op. to Gov. re Judicial Vacancy Due to Resignation*, 42 So.3d at 797. Here, the statutory qualifying period was due to commence at noon on April 28, 2014, 18 days after the vacancy occurred. As the vacancy occurred before the qualifying period commenced, the Secretary could not conduct a qualifying period because the vacancy had to be filled by appointment. See *Sheriff & Judicial Vacancies*, 928 So.2d at 1220–21.

The appellant argues that underlying policy considerations should lead to an interpretation favoring election unless the resulting vacancy is “unreasonable.” He argues that the vacancy here—one business day or three calendar days—is not so unreasonable as to require an appointment. In support he relies on *Spector*, 305 So.2d at 784. In *Spector*, an incumbent judge resigned effective at the end of his term,

midnight on the last day, the qualifying period and election were available after the resignation letter, and there was no emergency or public business requiring an immediate appointment. *Id.* The Florida Supreme Court held that the seat should be filled by election, recognizing that Florida law generally favors the elective process:

Interim appointments need only be made when there is no earlier, reasonably intervening elective process available. As between the appointive power on the one hand and the power of the people to elect on the other, the policy of the law is to afford the people priority, if reasonably possible ... if such policy is to be modified, let the people speak.

Id.

In *Pincket v. Harris*, this Court recognized that *Spector* had been limited to “situations in which a judge resigns effective at a future date and no interim vacancy will exist.” 765 So.2d at 287 (citing *645 *In re Advisory Op. to the Gov.*, 600 So.2d at 462)). The appellant argues that *Pincket* relied on dicta from *In re Advisory Opinion to the Governor* and that the spirit of the law should be read to mean if a circuit court judge resigns prior to the qualifying period his seat shall be filled by appointment unless his resignation is for a future date and no *unreasonable* vacancy will occur

We reject the appellant’s arguments inviting an analysis of the reasonableness of the vacancy, which, as pointed out by the Secretary, would be arbitrary and cannot constitute a duty that can be compelled by mandamus. Deciding the election versus appointment question on the duration of the vacancy created rather than on the interplay between the vacancy and the commencement of the election process would result in inconsistent and confusing precedent. *Cf. Advisory Opinion to the Governor re Appointment or Election of Judges*, 983 So.2d 526, 530 (Fla.2008) (“The determination of constitutional provisions should not vary based upon fluctuations of the individual ‘election process’ for a given year.”). Of further note, *Advisory Opinion to the Governor re Appointment or Election of Judges* answered the question of whether a judicial seat vacated by an involuntary retirement during the qualifying period should be filled by appointment, which would result in a vacancy of no more than 30 to 60 days, or by election, which would leave the seat unoccupied for more than eight months. *Id.* at 527–28. The Florida

Supreme Court held that because the vacancy occurred during the qualifying period, the vacancy was to be filled by election. *Id.* at 529. The supreme court focused on the fact that the election process had commenced without regard for the void that would occur in the office. *Id.*

Here, the vacancy created by Judge Moran's resignation occurred before the qualifying period, and a physical vacancy will occur during his term such that the vacancy must be filled by gubernatorial appointment. While the dissent may eschew a bright-line test, we cannot engage in a determination of what does or does not constitute an unreasonable vacancy warranting an appointment. If we were to interpret the case law as the dissent suggests and find that an election was required here when the election process had not yet begun, we would be nullifying the Governor's power of appointment in Article V, section 11(b), of the Constitution in post-election process resignations and pre-election process resignations. Stated otherwise, we would be allowing the limited exception created by *Spector* to swallow Article V, section 11(b), of the Constitution.

The circuit court appropriately denied the petition for writ of mandamus because there is no clear right to qualify for candidacy for a seat that is required to be filled by gubernatorial appointment.

AFFIRMED.

SWANSON, J., concurs.

PADOVANO, J., dissents with opinion.

PADOVANO, J., dissenting.

The majority has concluded that a judicial vacancy created by a resignation tendered before the qualifying period for a general election but with an effective date one day before the end of the judge's term must be filled by a gubernatorial appointment. With respect for my colleagues in the majority, I believe that this decision is contrary to the applicable case law and the controlling provisions of the Florida Constitution. Moreover, I believe that the precedent the court has set here is one that will have a high potential for abuse. The effect of the court's decision is to bestow upon an individual judge the power *646 to block an election by resigning just short of the end of his or her term in office. I do not think this decision is required as a matter of law, nor do I think that it is wise. For these reasons, I dissent.

The rationale of the majority's decision is that an appointment is required because the resignation at issue was accepted before the start of the qualifying period. On this point, I believe that majority has misconstrued the requirements of Article X, section 3 and Article V, section 11(b) of the Florida Constitution. The fallacy of the majority's reasoning is that it fails to account for the fact that the resignation was to take place at a distant point in the future. I acknowledge that the Governor would have had a right under these constitutional provisions to appoint Judge Moran's successor had the resignation become effective immediately or even if it had been scheduled to take place several months after the date of the resignation letter, as it ordinarily the case. But the problem here is that Judge Moran continues to occupy the office even to this day. His resignation was to take effect approximately eight months after the date of his resignation letter. The qualifying period for the 2014 general election occurred in the interim, and the election itself will have taken place in the interim.

It is true that the existence of a vacancy as defined in Article X, section 3 could trigger the need for a gubernatorial appointment, but that is not necessarily the case if the vacancy is created by a resignation that is to take place in the future. The Supreme Court's decision in *Spector v. Glisson*, 305 So.2d 777 (Fla.1974) serves as a good example. In that case, a justice who was ineligible to run for another term in office sent a letter of resignation to the governor prior to the start of the qualifying period for the next general election. The resignation was to take effect at midnight on the last day of the incumbent justice's term. A lawyer attempted to qualify for election to the office during the qualifying period, but the secretary of state refused to accept his qualifying papers, concluding that the seat was to be filled by an appointment. The lawyer then filed a petition for writ of mandamus seeking to compel the secretary to accept his qualifying papers. The Supreme Court granted the petition and directed that the seat be filled by an election.

The resignation in the *Spector* case did not create a right on the part of the governor to fill the vacancy by an appointment, because there was an intervening qualifying period and an intervening general election. The Supreme Court made it clear that the appointment process is to be used only when necessary to fill a seat that will be unoccupied. As the court stated, "the only excuse for the appointment of any officer made elective under the law is founded on the emergency of the public business." *Id.* at 781 (citations omitted). The court

expanded on this theme by stating in no uncertain terms that there is a strong preference for elections in Florida:

We feel that it necessarily follows from this consistent view and steadfast public policy of this State as expressed above, that if the elective process is available, and if it is not expressly precluded by the applicable language, it should be utilized to fill any available office by vote of the people at the earliest possible date. Thus the elective process retains that primacy which has historically been accorded to it consistent with the retention of all powers in the people, either directly or through their elected representatives in their Legislature, which are not delegated, and also consistent with the priority of the elective process over appointive powers except where explicitly otherwise provided. *647 We thereby continue the basic premise of our democratic form of government, that it is a 'government of the people, by the people and for the people.'

Id. at 782. Because judges are elected in Florida and because the vacancy at issue could have been filled by a candidate elected by the people in a general election, the court concluded that the governor was not entitled to make an appointment.

The only difference between this case and the *Spector* case is that the effective date of the resignation in this case was one day before the end of the term and not on the last day. The question we should be asking ourselves is whether this is the kind of difference that should compel an exception to the rule in *Spector*. I think that it is not. In both cases, the judges communicated an intention not to run for another term. The fact that one of them planned to leave office a day early is not, in my view, a valid reason to reach a different result. Thus, I believe that the majority has misapplied the *Spector* decision by relying on a distinction without a difference.

The majority contends that the *Spector* decision is not controlling here because it is limited to situations in which there will be no actual vacancy in the office. However, I think it is incorrect to say that any actual vacancy, regardless of its duration, triggers an exception to the rule in *Spector*. The cases the majority of this court relies on are all distinguishable in that they involve situations in which an appointment was necessary to avoid a substantial period in which the office would remain unoccupied.

For example, in *Advisory Opinion to the Governor*, 600 So.2d 460 (Fla.1992) the judge sent a letter to the governor

in March resigning effective the following July. That case differs substantially from *Spector* and this case, in that the office would have remained unoccupied for five months, irrespective of the intervening election. The same is true of all of the other cases. See *Advisory Opinion to the Governor re Sheriff & Judicial Vacancies Due to Resignations*, 928 So.2d 1218 (Fla.2006) (the judge resigned in April effective the following May, thus leaving the office unoccupied for seven months, regardless of the scheduled election that year); *Advisory Opinion to the Governor re Judicial Vacancy Due to Resignation*, 42 So.3d 795 (Fla.2010) (the resignation created an actual vacancy of seven months); *Pincket v. Harris*, 765 So.2d 284 (Fla. 1st DCA 2000) (the judge resigned on June 19th effective the next day, leaving an actual vacancy in the office for a period of six months).

The common feature of the cases is that they all involve situations in which the courts distinguished the holding in *Spector*, for the purpose of solving a problem: to avoid a lengthy gap in judicial service. But there is no such problem in this case. Here, as in *Spector*, there is no reason why the seat could not be filled by an election. Judge Moran resigned before the start of the qualifying period for the 2014 general election, and the effective date of his resignation is after the date of the election itself. The rationale of the *Spector* decision, that elective offices should be filled by elections whenever that is possible, is as compelling in this case as it was forty years ago when the decision was made.

The majority has concluded that the duration of the actual vacancy is immaterial, but in my view that is incorrect. Although there are cases holding that an actual vacancy of six months requires an appointment, as I have pointed out, it does not follow from the principle established in these cases that an actual vacancy of one day requires an appointment. I am not aware of any case that stands for the proposition that *any* actual vacancy, no *648 matter how brief it may be, requires an appointment. And I am confident that there is no authority for the proposition that the rights of voters can be overcome by a manufactured vacancy like the one we have before us in this case.

The reason given by the majority for holding that the duration of the actual vacancy is immaterial is that the task of deciding whether the vacancy in a particular case is too long or too short would lead to arbitrary results. There is some merit to that point, but I think that judges are well-equipped to make decisions like those—one could argue that is precisely what we are here to do—and that there is a greater danger in

following an inflexible rule, no matter how unfair the result may be, simply for the sake of following the rule. I think it would be far better to apply judgment and reason to resolve the issue on the facts presented in the case.

Finally, I fear that the precedent the court has set here, although well intended, will be abused by those who would manipulate the election process to suit their own political or philosophical objectives. Suppose, for example, that two judges in the same judicial circuit are retiring at the end of their respective terms in office. One of them likes the governor very much and the other strongly opposes the governor. The first judge could bestow the power of an appointment on the governor simply by resigning before the qualifying period but with an effective date the day before

the last day of his or her term. In contrast, the second judge could block a gubernatorial appointment simply by notifying members of the local bar that he or she does not intend to stand for re-election. Both judges would have chosen not to seek another term in office, yet one of them would have made the choice appear as though it were resignation before the end of the term. I see no reason why the court should allow the election process to be circumvented in this way.

For these reasons, I respectfully dissent.

All Citations

147 So.3d 641, 39 Fla. L. Weekly D1991

Footnotes

- 1 Appellee Bruce Anderson, Jr., intervened in the case below. His relief requested on appeal is moot in light of our disposition of the case.
- 2 Form DS-DE 9 must be filed before a candidate may raise or spend campaign funds, which can occur up to almost two years prior to the qualifying period for the office sought. § 106.021(1)(a), Fla. Stat. (2014).
- 3 The appellant's petition was originally filed with the Florida Supreme Court, who transferred the petition to the Leon County Circuit Court via order of June 2, 2014.

VIII. REIMBURSEMENT INFORMATION



RICK SCOTT
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com

850-488-7146

850-487-0801 fax

To: All JNC Commissioners

From: Heather L. Stearns 
Deputy General Counsel
Executive Office of the Governor

Date: November 13, 2015

Re: Reimbursement of JNC Expenses

Reimbursement by the state for expenses incurred by JNC commissioners includes: postage; reasonable charges for newspaper advertising; credit investigation reports; transportation expenses of members on official travel; and reasonable telephone and photocopying charges. Payment of these expenses is subject to the same statutory limitations and State of Florida regulations as are all state financial obligations. To clarify the Executive Office of the Governor reimbursement policy on judicial nominating commission expenses, the following guidelines are provided:

1. Postage
 - a. Postage expenditures will be reimbursed directly to the chair of each judicial nominating commission for official mailings related to the commission's activities.
 - b. All postage reimbursement requests must be prepared on the Travel Reimbursement Form or the Reimbursement Voucher for Expenses Other Than Travel Form (copy attached), and submitted directly to the Executive Office of the Governor.
 - c. A paid receipt must accompany all postage reimbursement requests. Receipts must be itemized and show the total dollar amount paid.
2. Advertisements and Credit Investigation Reports
 - a. We encourage the use of the Governor's new judicial website for all advertising needs.

- b. The use of the Florida Bar News and Florida Administrative Weekly may also be used for advertising.
 - c. In general, newspapers and credit investigation agencies will provide services on an invoice or charge account basis. Each judicial nominating commission chairman should require invoices plus copies of the advertisement. Additionally, any state government discounts should be obtained and reflected on invoices or billings.
 - d. No newspaper advertisements or credit investigation reports may be charged directly to the State of Florida, but instead should be charged to the chair and submitted for reimbursement on the Reimbursement Voucher for Expenses Other Than Travel Form. Please include a copy of the advertisement with applicable receipts and documentation.
 - e. Direct mailings to all members of The Florida Bar News in a jurisdiction for which a vacancy will be filled are discouraged and should only be used when necessary to make judicial nominations within constitutionally mandated deadlines. Alternatively, notice should be placed in The Florida Bar News or other appropriate legal publications.
3. Travel – Please see the attached Executive Office of the Governor Travel Navigator and Travel Training Handbook.
- a. A State of Florida Authorization to Incur Travel Expenses Form must be submitted and approved by the Executive Office of the Governor prior to any travel. All travel reimbursement requests must be prepared on the Travel Reimbursement Form (Voucher for Reimbursement of Travel Expenses) and submitted directly to the Executive Office of the Governor. (See attached)
 - b. Travel reimbursements will be made only for direct round trip transportation costs from a commission member’s headquarters city (legal residence) to any official meeting for considering and/or making nominations for judicial vacancies.
 - c. Transportation costs include a mileage allowance for the use of a member’s private automobile or expenditures made for travel performed by commercial common carrier, whichever is least expensive.
 - d. Reimbursement for the use of a commission member’s private automobile will be made at the rate of 44.5 cents per mile according to the mileage

chart shown on the Official Road Map published by the Florida Department of Transportation. Reasonable vicinity mileage is also allowable.

- e. Rental vehicles may be reimbursed if this mode of transportation is the most economical form of travel. Only Class C (compact) vehicles may be rented at the State Rate. The rental car is paid for by the traveler and submitted for reimbursement along with all applicable receipts on the Voucher for Travel Reimbursement Expenses Form.
 - f. Reimbursement for travel performed by common carrier will be made at receipted coach class airfare rates and receipted ground transportation rates. The state contract for air transportation should be used when possible (your travel agent can assist you with this).
 - g. Reimbursement for meals incurred during official travel status outside the member's headquarters city, will be made at a fixed rate of \$6.00 for breakfast, \$11.00 for lunch, and \$19.00 for dinner, consistent with a commission member's departure and arrival times from the respective headquarters city.
 - h. All travel reimbursement requests must be approved and signed by the respective chair of a judicial nominating commission and be accompanied by the appropriate paid receipts for air fare (travel coupon) and ground transportation expenditures (airport bus, taxis, etc.), if such mode of transportation is utilized.
 - i. The traveler's full name, social security number, address, and telephone number must appear on the face of the voucher reimbursement form.
4. Telephone Charges and Photocopying
- a. These costs are allowable provided they are reasonable and documented and submitted for reimbursement on the Expenses Other Than Travel Form. (See attached)
 - b. Reimbursement of long distance telephone charges can be made to commission members upon submission of a detailed telephone bill highlighting official calls and a statement explaining how the particular call related to the nominating process.

- c. Charges of photocopying and facsimiles must be reasonable and within the state guidelines that only actual costs incurred can be billed. Depending on individual circumstances, costs should not normally exceed 10 to 15 cents per page. Documentation must include a written explanation specifying how the charge was derived and how copies were related to judicial nominating business.

All invoices, travel vouchers, and requests for reimbursement must be approved by the respective chair of a judicial nominating commission and submitted directly to the Executive Office of the Governor for payment processing. On the average, voucher processing will take approximately 20 days, although the law allows 40 days. The Executive Office of the Governor will not process any invoices or billings unless they are submitted by and/or through a respective judicial nominating commission chair and bear his or her authorizing signature.

Requests for payments from the Judicial Nominating Commission expense reimbursement account should be directed to the following address:

Executive Office of the Governor
Judicial Appointments/JNC Coordinator
The Capitol Bldg., Room 209
400 South Monroe St.
Tallahassee, FL 32399

If you have any questions regarding payment procedures, please call Laura Dane, Judicial Appointments/JNC Coordinator, (850) 717-9310.

CLASS A TRAVEL (PER DIEM)

Continuous travel of 24 hours or more away from official headquarters; \$20.00 per quarter of a day or \$80.00 per day (currently disallowed); or reasonable single hotel lodging plus meal allowance.

CLASS B TRAVEL (PER DIEM)

Continuous travel of less than 24 hours requiring overnight absence from official headquarters; \$20.00 per quarter of a day based on 6 hour cycles starting at midnight (currently disallowed); or reasonable single rate hotel lodging plus meal allowance.

PER DIEM / ACTUAL EXPENSES

Travelers may elect to receive Per Diem or Actual Expenses of Class A or Class B travel.

* Per Diem - \$80.00 or \$20.00 per quarter of a day. Reimbursement will be made on a calendar day basis (midnight to midnight).

* Actual Expenses - Reasonable single rate hotel lodging plus meal allowance. Original hotel receipts are required.

MEAL ALLOWANCES:

Breakfast: \$6.00 travel begins before 6 a.m. and extends beyond 8 a.m.

Lunch: \$11.00 travel begins before 12 noon and extends beyond 2 p.m.

Dinner: \$19.00 travel begins before 6 p.m. and extends beyond 8 p.m.

CLASS C TRAVEL (MEALS ONLY)

Suspended.

Reference 112.061(15), Florida Statutes

ALL STATE TRAVEL MUST BE IN COMPLIANCE WITH CHAPTER 112.061, FLORIDA STATUTES, AND CHAPTER 69I-42, FLORIDA ADMINISTRATIVE CODE.

AIRLINE TICKETS

Coach seating must be utilized. Travelers may purchase tickets from commercial airlines or travel agents.



Airline passenger flight itinerary and / or boarding pass must be attached to the travel reimbursement voucher form for reimbursement. The EOG does not currently have a contract carrier.

Use of non-contract carrier requires justification (*when applicable*):

- * no contract flight is available
- * no seat is available
- * use is cost effective (*considering salary and/or additional travel cost*)

All travel accommodations club membership dues paid by a state employee are not reimbursable by the State of Florida.

ALL TRAVEL MUST BE BY THE MOST ECONOMICAL FORM OF TRANSPORTATION.

Certain expenditures, such as hotel room nights, may be tax exempt. Contact Administration for a copy of the state tax exemption certificate. Sales tax exemptions are available only for those items paid by the EOG directly to the vendor or hotel.

RENTAL VEHICLES

Refer to the existing State Contract (78111808-15-1) with Enterprise Rent-A-Car or National Car Rental (EAN Services, LLC) for rental rates. Reservations are made by calling (1-877-690-0064) or using the Enterprise/National rental reservation portal: <https://partner.rentalcar.com/StateofFlorida>. Class C (*compact*) vehicles are to be rented. Any other class vehicles may be used only with proper justification.

Rental car is paid by the traveler and submitted for reimbursement. There is no direct billing to the EOG available at this time.

Primary insurance coverage is included in the State Contract for bodily and property damage.

Vehicle classes not included in the Enterprise/National contract are not covered by insurance.

NON-REFUNDABLE INSURANCE:

- * Personal Accident Insurance (PAI)
- * Collision Damage Waiver (CDW)
- * Loss Damage Waiver (LDW)

Gasoline purchase for rental cars: Rental cars should be returned with the same amount of gas as when rented. Employees should attach original gas receipts to travel voucher for reimbursement.

The state does not prohibit the use of rental vehicles that have lower net rates. A statement must be recorded on the travel voucher stating "vehicle with lower net rate rented" or "vehicle not available from the contractor."

Enterprise and National Rental Roadside Assistance Phone Number: 1-800-307-6666

If you are involved in an accident while in an Enterprise/National rental, contact the local police department and Enterprise/National. A copy of the police report and an accident/incident report (located in the rental packet received upon receipt of the vehicle) must be provided to the rental location.



PRIVATE VEHICLE

Map Mileage- Travel in personal vehicle will be reimbursed at \$0.4450 per mile based on the Florida Department of Transportation Official Map Mileage chart. All mileage shall be shown from point of origin to point of destination.

Vicinity Mileage- Travel that is necessary to conduct official state business in addition to the official map mileage to a destination. Vicinity mileage in excess of 25 miles per day must be justified.

MANDATORY USE OF SEAT BELTS AND SAFE OPERATING OF VEHICLES (RENTAL, STATE OR PERSONAL) WHILE OPERATING DURING STATE BUSINESS IS REQUIRED.

REGISTRATION FEES

Travel Authorization Request (TAR) form DFS-AA-13, must be completed and authorized to attend a conference or convention. A completed TAR, registration form and agenda is required for advance payments. The traveler must attach original paid receipt, TAR, and agenda to the travel reimbursement voucher for reimbursement of registration fees.

MEALS included in registration fees cannot be claimed for reimbursement. This applies whether claiming per diem, actual or Class C meals.

INCIDENTAL BUSINESS EXPENSE

- Taxi Fares (*receipt required if over \$25 per trip*)
- Tips to Taxi Drivers (*reasonable, not greater than 15% of the fare per trip*)
- Tolls, storage or parking fees (*receipts required in excess of \$25*)

- Communication expense (*i.e. telephone / fax / telegraph / internet access; receipts required*). Must state on travel voucher "State Business"
- Tips for mandatory valet parking (*not more than \$1 per occasion*)
- Portage charges (*not more than \$1 per bag, up to \$5 per occasion*)
- Registration fees (*receipts required*)
- Airfare (*contract carrier unless justified, when applicable*)
- Rental vehicles (*contract carrier unless justified*)

NON-REFUNDABLE TRAVEL EXPENSE

- * Personal organizational membership dues
- * Expense for the sole purpose of taking a Career Service or other job placement or professional exam.
- * Acceptance of personal award which is funded from non-state funds.
- * Partisan / political / social travel
- * Nongovernmental business
- * Travel accommodations club membership dues

TRAVEL REIMBURSEMENT

Travelers must file ALL travel expenses on the State of Florida Voucher for Reimbursement of Traveling Expenses Form DFS-AA-15. Complete the Voucher Reimbursement of Traveling Expenses form and submit all required receipts. Travelers are to file documentation with Administrative Services within five (5) working days after the end of the travel period. If using a State of Florida purchasing card ("P-Card"), time periods for submitting documentation may be shorter due to State regulations. Please refer to your purchasing card guidelines for additional information regarding use.

Updated September 30, 2015

The Travel Navigator



Executive Office of the Governor



State of Florida

Executive Office of the Governor Travel Training Handbook

Please read this handbook carefully.

The state government is limited in paying government employees, agents or appointees certain expense reimbursement rates as provided by law. These limited reimbursement rates are often lower than agents or appointees may be accustomed to in the private sector. Expenses beyond those contemplated on the voucher form and in this handbook WILL NOT BE REIMBURSED without prior written approval from the Executive Office of Governor and in most cases such written approval cannot be given as a matter of law.

The purpose of this document is to provide instruction on the completion of the State of Florida Voucher for Reimbursement of Traveling Expenses (“travel voucher”) and the State of Florida Authorization to Incur Travel Expenses (“TAR”). These forms are to be utilized only for reimbursable travel expenses incurred (or anticipated to be incurred) during the conduct of authorized State business activities. For additional information or questions, please contact the Executive Office of the Governor, Administration Office.

ALL STATE TRAVEL MUST BE IN COMPLIANCE WITH CHAPTER 112.061, FLORIDA STATUTES, AND CHAPTER 69I-42, FLORIDA ADMINISTRATIVE CODE and must be by the most economical form of transportation. Travelers must file ALL travel expenses on the State of Florida Voucher for Reimbursement of Traveling Expenses Form DFS-AA-15 (attached). Complete the Voucher Reimbursement of Traveling Expenses form and submit all required receipts. Travelers should file all reimbursement requests to the Administration Office promptly (within 5 working days of travel period).

I. State of Florida Authorization to Incur Travel Expenses/Travel Authorization Form (TAR):

The TAR form DFS-AA-13 (EOG File Name TAR_6-2013.xls), should be used for requesting advance approval for all travel by EOG employees, appointees, or agents.

An employee should not travel on behalf of the EOG without authorization. To document this, a TAR may be completed even when there is no reimbursement to the employee or cost to the state, and the employee is traveling outside of his/her official headquarters or immediate vicinity. This authorization/TAR is to remain with the employee and is not necessary to be filed with EOG Administration office unless there are costs incurred. If costs are anticipated to be incurred, whether by the employee or by the EOG, a TAR is to be completed as indicated below.

Additionally, a completed TAR is required for requesting approval to attend a conference or convention per Rule 69I-42.004 Florida Administrative Code. A completed TAR, registration form, and agenda are required for payment/registration.

Executive Office of the Governor Travel Training Handbook

All EOG employees, appointees, or agents must receive advance approval for any travel using the Travel Authorization Form (TAR). The TAR should be signed by the employee/appointee and employee's supervisor or appointee's EOG liaison, then sent to the Administration Director for budgetary review. Once approved by the Administration Director (or delegate), the TAR will be forwarded to the Chief of Staff (or delegate) for final approval. Authorized travel by vendors is to be approved by the assigned Contract Manager, then routed to the Administration Office, prior to routing to the Chief of Staff for final approval. Once the TAR has been approved, the trip can be scheduled and the appropriate arrangements can then be made. Please note, if the Administration Office does not have an approved TAR on file upon submission of the reimbursement for travel expense form, the travel may not be reimbursed.

A: Traveler

This line should indicate the name of the person who will be traveling and seeking reimbursement.

B: Purpose

Provide a descriptive purpose or reason for the travel. The purpose should be descriptive enough to document the reason for the trip. Expansive detail is not required; however, travelers will be contacted if the reason is deemed insufficient. Acronyms should be avoided.

Good Example: Attended meetings with Miami City Officials on behalf of the Governor
Bad Example: Meetings in Miami

Additionally, the traveler should indicate the destination, purpose, departure and return times, and mode of travel.

C. Description of Potential Costs

Indicate potential costs for each day associated with each of the named categories on the form. Travelers are reminded that all costs must be the most economical to the State.

D. Explanation of Benefits Accruing to the State of Florida

This statement is required for all conference or convention travel. Registration fees and travel expenses incurred with attendance of conferences and conventions will not be paid unless:

- The main purpose of the conference or convention is directly related to the statutory duties and responsibilities of the agency.

Executive Office of the Governor Travel Training Handbook

- The duties and responsibilities of the traveler are related to the objectives of the convention or conference.
- The activity provides a direct benefit supporting the work and public purpose of the person attending.

II. State of Florida Voucher for Reimbursement of Travel Expenses/Travel Reimbursement Form:

The Travel Reimbursement form DFS-AA-15 (EOG File Name TRVFORM_5-2013.xls, is to be used for requesting reimbursement for all travel expenses incurred by EOG employees, appointees, or agents.

A: Traveler

This line should indicate the name of the person that traveled and is seeking reimbursement. Should another person have incurred expenses on the traveler's behalf, this should be indicated in the body of the travel voucher citing the name of the other involved parties. (Note: The social security number of the traveler is required for reimbursement to the traveler. However, the traveler may choose to omit the SSN from the reimbursement request form. If the SSN is omitted from the travel reimbursement form, the traveler must contact the Administration office so other arrangements can be made to obtain the necessary information.)

B: Officer/Employee or Non Employee

The traveler should indicate whether he/she is a State employee (on the EOG or other state agency payroll) or a Non Employee (volunteer, eligible contractor, etc). EOG employees should indicate the unit in which he/she works in the "UNIT" line.

C: Date

Provide the date of travel. A separate line should be completed for each day traveled.

D: Travel Performed from Point of Origin to Destination

Provide the point or origin and destination of travel.

Example: Tallahassee to Miami

E: Purpose or Reason

Executive Office of the Governor

Travel Training Handbook

Provide a descriptive purpose or reason for the travel. The purpose should be descriptive enough to document the reason for the trip. Expansive detail is not required; however, travelers will be contacted if the reason is deemed insufficient. Acronyms should be avoided.

Good Example: Attended meetings with Miami City Officials on behalf of the Governor
Bad Example: Meetings in Miami

F: Hour of Departure and Return

Provide the time of departure and return. This is a required field used to determine meals eligibility.

G: Purchasing Card Payments

Provide each individual purchasing card amount and indicate vendor and type in the "Other Expenses" column.

H: Meals for Class A and B Travel

Indicate eligible reimbursements as described below:

Class A Travel (Per Diem)

Suspended until further notice; as of 11/18/2011

Class B Travel (Per Diem)

Suspended until further notice; as of 11/18/2011

Meal Allowances:

Breakfast: \$6.00 travel begins before 6 a.m. and extends beyond 8 a.m.

Lunch: \$11.00 travel begins before 12 noon and extends beyond 2 p.m.

Dinner: \$19.00 travel begins before 6 p.m. and extends beyond 8 p.m.

Note: Meals (included continental breakfasts) may not be reimbursed when included in a conference agenda or supplied by a conference or training event, even if the traveler decides for personal reasons not to eat the meal.

I: Per Diem or Actual Expenses

Reimbursement will be made on a calendar day basis (midnight to midnight).

Executive Office of the Governor Travel Training Handbook

- Actual Expenses - Reasonable single rate hotel lodging plus meal allowance. Original hotel receipts are required.
- Per Diem - Suspended until further notice; as of 11/18/2011

J: Class C Travel (Meals Only)

Suspended; *please refer to Section 112.061(15), Florida Statutes.*

K: Map Mileage Claimed

Indicate the miles traveled from point of origin to destination when utilizing a personal vehicle. Travel in a personal vehicle will be reimbursed at \$.4450 per mile based on the Florida Department of Transportation Official Map Mileage Chart. Mileage will only be reimbursed up to 100 miles for a trip unless sufficient documentation or explanation supporting additional savings to the state is provided. If a trip is over 100 miles; a state contract rental car is to be used, if available and most economical.

L: Vicinity Mileage Claimed

Indicate travel that is necessary to conduct official state business in addition to the official map mileage to a destination. Vicinity mileage in excess of 25 miles per day must be justified.

M: Other Expenses

Indicate all other expenses by providing amount and type of expense. Guidance related to typical expenses is noted below:

Airline Tickets

Coach seating must be utilized when available. Non-refundable plane tickets should be purchased when possible because they are, in fact, generally transferable to another flight for a \$150 transfer fee. This is generally cheaper than paying the refundable ticket airfare. Travelers may purchase tickets from commercial airlines or travel agents. Airline passenger flight itinerary and / or boarding pass must be attached to the travel reimbursement voucher form for reimbursement. The EOG does not currently have a contract carrier; therefore, traveler should seek the most economical rate when purchasing airline tickets.

All travel accommodations club membership dues paid by a state employee are not reimbursable by the State of Florida.

Rental Vehicles

Executive Office of the Governor Travel Training Handbook

Refer to the existing State Contract (78111805-15-1) with Enterprise or National Rental Car for rental rates. Reservations are made using the State of Florida registration portal (<https://partner.rentalcar.com/StateofFlorida/#/business>) or dedicated toll free number (1-877-690-0064). Class CCAR (*compact*) vehicles are to be rented. Any other class vehicles may be used with proper justification. The rental car is to be paid by the traveler and submitted for reimbursement. Rental car reservations and cancellations are the responsibility of the traveler.

Primary insurance coverage is included in Enterprise/National State Contract for bodily and property damage.

Non Refundable Insurance:

- * Personal Accident Insurance (PAI)
- * Collision Damage Waiver (CDW)
- * Loss Damage Waiver (LDW)

Gasoline purchase for rental cars: rental cars should be returned with the same amount of gas as when rented. Employees should attach original gas receipts to travel voucher for reimbursement.

The state does not prohibit the use of rental vehicles that have lower net rates. A statement must be recorded on the travel voucher stating “*vehicle with lower net rate rented*” or “*vehicle not available from the contractor.*”

Incidental Business Expenses

- **Taxi Fares** – Receipts should be submitted for all taxi fares, but are not required if fare is under \$25 per trip.
- **Tips to Taxi Drivers** – Tips should be reasonable, not greater than 15% per trip
- **Tolls**, Storage, or Parking Fees** – Receipts are required for all fees in excess of \$25. Such fees shall not be allowed on a weekly or monthly basis for privately owned vehicles unless it can be established that such method would result in cost savings to the State.
- **Communication Expense** – Examples are telephone, fax, and internet access. Receipts are required for these fees. Traveler must state on the travel voucher that expenses were for state business.
- **Tips for mandatory valet parking** – Tips should not exceed \$1 per occasion.
- **Portage Charges** – Portage should not exceed more than \$1 per bag, up to \$5 per occasion.
- **Registration Fees** – Receipts and justification is required.
- **Airfare** – Travelers should use contract carrier when applicable.
- **Rental Vehicles** – Travelers should utilize contract carrier unless

Executive Office of the Governor Travel Training Handbook

otherwise justified.

**** The EOG does not issue SUNPASS transponders. Travelers are directed to pay cash when available. For those traveling on toll roads that do not accept cash, travelers may utilize PlatePass/Electronic Tolling to charge tolls. In these instances, the toll and convenience fee for electronic tolls is reimbursable to the traveler. However, the EOG will not pay for any employee toll violations.**

Non-Refundable Travel Expenses

- Personal organization membership dues
- Expense for the sole purpose of taking a Career Service or job placement exam or professional exam
- Acceptance of a personal award which is funded from non State funds.
- Partisan/political/social travel
- Nongovernmental business
- Travel accommodations club membership dues

N. Statement of Benefits to State for Conferences/Conventions

For all registration fees, a Travel Authorization Request/Authorization to Incur Travel Expenses (TAR) form DFS-AA-13, must be completed and authorized to attend a conference or convention. A completed TAR, registration form, and agenda are required for advance payments. The traveler must attach original paid receipt, TAR, and agenda to the travel reimbursement. The traveler must indicate the benefit to the State for conference attendance on the travel reimbursement form.

MEALS included in registration fees cannot be claimed for reimbursement. This applies whether claiming per diem, actual, or Class C meals.

O. Traveler's Signature and Supervisor's Signature

Traveler must sign each submitted travel voucher and it must be approved and signed by the traveler's supervisor. Unsigned travel vouchers will be returned to the traveler for appropriate signatures prior to processing.

Other items of note:

When making travel arrangements, always ask for a government rate, if available. The Administration office can provide a fax verification that the traveler is in fact on

Executive Office of the Governor Travel Training Handbook

government business, if necessary. Additionally, certain expenditures, such as hotel room nights, may be tax exempt. Contact Administration for a copy of the state tax exemption certificate.

STATE OF FLORIDA Authorization To Incur Travel Expenses	Name		Official Headquarters			Date				
	Department		Division							
TRAVEL DATES: Month ___ Date(s) ___ Year ___	Description of potential costs (reflected in \$)									
PURPOSE OF TRAVEL*: This is a text box	Registration Fee	Per Diem	Meals	Airline	Car Rental	Mileage**	Hotel	Ground Transportation	Parking	Misc.
* Indicate the destination, purpose, departure and return times, where you may be contacted, mode of travel (i.e., commercial state aircraft, state vehicle, personal car, etc.). Also indicate if rental car is to be used.										
	** .445 times # miles	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Estimated Cost	\$0.00									
Explanation of benefits accruing to the State of Florida. (This statement is required for all conference or convention travel.)										
This is a text box. Click once to place the cursor in the text box. Delete these instructions and enter up to 4 lines of new text. Text will automatically wrap within the text box.										
Is teleconferencing or other form(s) of electronic communication available? <input type="radio"/> Yes <input checked="" type="radio"/> No										
I hereby certify that travel as shown above is to be incurred in connection with official business of the State of Florida										
Signed			Approved by - Supervisor				Approved - Agency Head			
Date			Date				Date			

IX. ETHICS & CONFLICTS DISCLOSURE

Stanley M. Weston
Chair
Matthew F. Carlucci
Vice Chair
Michelle Anchors
Michael Cox
I. Martin Ford
Tom Freeman
Wiley Horton
Susan Horovitz Maurer
Linda McKee Robison



State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

Virilindia Doss
Executive Director

C. Christopher Anderson, III
*General Counsel/
Deputy Executive Director*

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

"A Public Office is a Public Trust"

MEMORANDUM

TO: Judicial Nominating Commission Members
FROM: Virilindia Doss, Executive Director *VAD*
DATE: October 20, 2015
SUBJECT: Gift and Disclosure Standards under Florida's Ethics Laws

This is an update of memos the Commission has provided the JNCs since 2009. I hope you will find it helpful, and please know that the staff of the Commission is available to help JNC members work through any questions or issues they may have. Feel free to call on us at any time.

FINANCIAL DISCLOSURE OBLIGATION: Section 112.3145

Historically, any appointed officer in Florida whose board or commission did not have solely advisory responsibilities was required to file the "limited" financial disclosure Form 1.¹ The Ethics Commission concluded that the JNCs were not solely advisory, because they limited the Governor's ability to select judges.² The Supreme Court JNC members were considered "state officers" under the disclosure law because of their statewide jurisdiction, filing their disclosures in Tallahassee; the DCA and Circuit JNCs were considered "local officers," because the Districts and Circuits only encompassed portions of the State, and so they filed their disclosures locally.³

In 2001, DCA and Circuit JNC members were redefined as "state officers" for purposes of financial disclosure, joining the Supreme Court JNC members in the requirement to file with the

¹ "Limited" in the sense that the "full" disclosure required of constitutional officers who file Form 6 requires more detailed disclosures, including valuations of assets, liabilities, net worth, and income.

² Beginning with Ethics Commission opinion CEO 74-11. (All materials cited in this memo are available at the Commission's website: www.ethics.state.fl.us.)

³ Section 112.3145, Florida Statutes, (1975); CEO 76-164, CEO 76-161, CEO 77-152.

Commission on Ethics in Tallahassee.⁴ Now, JNC members must file their Form 1 within 30 days of their appointment and every July 1 thereafter through their term; they must also file a final Form 1 (Form 1F) within 60 days of leaving their position to cover the last portion of their term.⁵

THE GIFT LAW, SINCE 1991: Section 112.3148

Following a number of prosecutions for failure to report gifts worth over \$100 (typically, trips provided by lobbyists), the Legislature met in special session at the end of 1990 and completely revamped their gift standards. Taking a uniform approach, they also applied the new standards to everyone else in government who is required to file a financial disclosure statement.⁶

The new law had four primary approaches. First, for each "reporting individual" there was a group of prohibited donors—persons and entities from whom they could not accept a gift worth over \$100. Secondly, if someone in the prohibited donor group gave a gift worth between \$25 and \$100 to the reporting individual, the donor had to disclose the gift. Thirdly, the reporting individual had to disclose each gift that was worth over \$100, on a quarterly basis. And finally, a gift from a relative⁷ was neither prohibited nor reportable.

The prohibited donors are:

- Each person who, for compensation, sought to influence the reporting individual or his or her agency within the past 12 months (a "lobbyist");
- the lobbyist's firm and partners;
- the employer or principal of that lobbyist; and,
- vendors doing business with one's agency.⁸

"Political committees" and "committees of continuous existence" as defined under the election laws also were considered to be prohibited donors; however, in the 2013 legislative session, committees of continuous existence were abolished, and thus are no longer of concern. Gifts from political committees were prohibited completely, and will be addressed further, below. The gift law requires each reporting individual to determine, for each gift offered that is worth more than \$100, whether the donor has been paid to lobby his or her agency within the previous year or whether the donor is the employer, firm, or partner of such a lobbyist, or is a vendor of the agency.

For the JNCs, the prohibitions contained in the gift law are of little concern. Since nobody gets hired to influence a JNC, nobody fits the definition of "lobbyist" and there is no reason to worry about the firm, partners, or employer of such a "lobbyist." Similarly, the JNCs do not operate as agencies, and so there is little likelihood of having a "vendor" that could be a prohibited donor.

⁴ Sec. 2, Ch. 2001-282, Laws of Fla.

⁵ Sec. 112.3145, Fla. Stat.

⁶ See the definition of "reporting individual" in Sec. 112.3148(2)(d), Fla. Stat. (Article V judges are excluded.)

⁷ Defined in Sec. 112.312(21), Fla. Stat.

⁸ Vendors were added in Secs. 12 and 14, Ch. 2013-36, Laws of Fla.

However, even though prohibited gifts aren't a worry, gifts that are allowed to be accepted and are worth over \$100 still must be reported on a quarterly basis by filing Ethics Commission Form 9 with the Commission to report gifts received during a calendar quarter no later than the end of the next calendar quarter.⁹ Again, gifts from relatives are excepted from this requirement.

THE "EXPENDITURE BAN," SINCE 2006: Section 112.3215

As part of revamping of the legislative branch lobbyist registration and reporting law in a special session at the end of 2005, the Legislature prohibited its members from accepting any "expenditure" from either a registered legislative branch lobbyist or the principal of such a lobbyist.¹⁰ Although using the term "expenditure," the law basically prohibits a lobbyist or principal from giving, and a legislator or legislative employee from accepting, a gift of *any* value.

Once again taking an across-the-board approach, the Legislature applied the new standards to everyone in the executive branch of government who is required to file a financial disclosure statement.¹¹ As a practical matter, this means that executive branch officers and high level employees are prohibited from accepting anything of value from executive branch lobbyists, or from the principals of such lobbyists. Unlike the gift law that has been in effect since 1991, under the "expenditure ban" it doesn't matter whether the donor lobbies the individual's agency or a different executive branch agency. If the donor is an executive branch lobbyist or is the principal of an executive branch lobbyist, no gift can be made. "Dutch treat" or "pay as you go" is the rule in these situations.

It appears that the JNCs are part of the executive branch.¹² If that is the case, then the members of each JNC are prohibited from accepting any gift from someone who is an executive branch lobbyist, or from the principal of such a lobbyist. The names of registered executive branch lobbyists and principals can be searched online, at: www.floridalobbyist.gov.

POLITICAL COMMITTEES: Section 112.31485

As previously mentioned, in Chapter 2013-36, Laws of Florida (formerly Senate Bill 2) the Legislature did away with committees of continuous existence, and it prohibited gifts from political committees entirely. The new Section 112.31845 has its own specific definition of "gift," which is, "any purchase, payment, distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106." Reporting individuals and their spouses, children, parents and siblings are prohibited from accepting such gifts.

⁹ Sec. 112.3148(8), Fla. Stat.

¹⁰ Sec. 11.045(4)(a), Fla. Stat.

¹¹ Sec. 112.3215(6)(a), Fla. Stat.

¹² In re Advisory Opinion to the Governor, 276 So. 2d 25 (Fla. 1973).

QUARTERLY CLIENT DISCLOSURE: Section 112.3145

Since 1975, persons required to file financial disclosure also have been required to disclose, on a quarterly basis, clients represented by themselves or their firms before agencies at their level of government (State or local).¹³ The disclosure is made on Ethics Commission Form 2, Quarterly Client Disclosure, filed with the Commission.

As a state officer required to file financial disclosure, a JNC member must "file a quarterly report of the names of clients represented for a fee or commission" before "state-level agencies" (as opposed to local government entities). The report is due no later than the last day of the calendar quarter for representations made during the previously completed quarter. In other words, file by September 30 for representations made during April, May, and June. You do not need to file the form if there are no representations to report.

The statute specifically excludes the following appearances and matters:

- In ministerial matters;
- Before any court;
- Before the Deputy Chief Judge of Compensation Claims or Judges of Compensation Claims;
- On behalf of one's agency in one's official capacity;
- The preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license or operation permit to engage in a profession, business, or occupation, so long as the issuance or granting of such license, permit, or transfer does not require substantial discretion, a variance, a special consideration or a certificate of public convenience and necessity.

It appears that all other matters involving "representations" of a client before a state-level agency should be reported. The term "representation" is defined broadly, and includes:

actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.¹⁴

The statute specifically includes representations made by others in your firm:

Representation before any agency shall be deemed to include representation by such officer...or by any partner or associate of the professional firm of which he or she is a member and of which he or she has actual knowledge.

¹³ Sec. 112.3145(5), Fla. Stat.

¹⁴ Sec. 112.312(22), Fla. Stat.

You are a "member" of a firm if you are a partner or associate of the firm; "of counsel" may or may not make one a "member," depending on the details of the relationship.¹⁵

The "of which he or she has actual knowledge" language was addressed in opinion CEO 76-170. There, the Commission stated:

It is our opinion that the reporting person therefore has an affirmative duty to see that he is informed of all representations required to be disclosed. Such duty would not be fulfilled by mere guessing, or by listing those agencies which "probably" were contacted, as you suggest at one point in your letter of inquiry. At another point, however, you employ the phrase "agencies for which we could have contact during [the] reported period." The disclosure of all agencies potentially contacted would, in our view, fulfill the disclosure requirement, provided that you exercise reasonable care in seeing that you receive knowledge of all firm activities which may prove to be subject to disclosure.

Along the same line, the Commission stated in CEO 74-78:

[I]t is the opinion of this commission that the phrase "of which he has knowledge" means actual knowledge, especially in view of the intentional violation provision of the act. We would go farther, however, and point out that a deliberate effort to evade actual knowledge would be unethical. A reporting public officer has a duty to exercise reasonable care in seeing that he does receive actual knowledge of representations of which a reasonably prudent person would be expected to receive.

The key seems to be the Commission's view that the official exercise reasonable care in seeing that he or she receives knowledge of all firm activities which may prove to be subject to disclosure. If reasonable care is taken, but the representation still wasn't known by the reporting official, then there should be no consequences.

That makes the disclosure more onerous for some firms than others. In our experience, some of the largest law firms have, at various times, several members who serve on several different State boards, including the Ethics Commission. Because several members of the firm are required to file the reports, they have managed by including in either their client/conflict database or in their billing records information about representations that would enable the database to generate the quarterly reports.

¹⁵ CEO 74-55, CEO 92-11.