

By Commissioner Barkdull

1                                   A proposal to revise  
2       ARTICLE V, s. 12, Fla. Const.; providing for  
3       membership of the judicial qualifications  
4       commission.  
5  
6 It is proposed by the Florida Constitution Revision Commission  
7 that:  
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9       Section 1. Section 12 of Article V of the Florida  
10 Constitution is revised by amending that section to read:  
11                                   ARTICLE V  
12                                   JUDICIARY  
13       SECTION 12. Discipline; removal and retirement.--  
14       (a) JUDICIAL QUALIFICATIONS COMMISSION.--A judicial  
15 qualifications commission is created.  
16       (1) There shall be a judicial qualifications  
17 commission vested with jurisdiction to investigate and  
18 recommend to the Supreme Court of Florida the removal from  
19 office of any justice or judge whose conduct, during term of  
20 office or otherwise occurring on or after November 1, 1966,  
21 (without regard to the effective date of this section)  
22 demonstrates a present unfitness to hold office, and to  
23 investigate and recommend the discipline of a justice or judge  
24 whose conduct, during term of office or otherwise occurring on  
25 or after November 1, 1966 (without regard to the effective  
26 date of this section), warrants such discipline. For purposes  
27 of this section, discipline is defined as any or all of the  
28 following: reprimand, fine, suspension with or without pay, or  
29 lawyer discipline. The commission shall have jurisdiction over  
30 justices and judges regarding allegations that misconduct  
31 occurred before or during service as a justice or judge if a

1 complaint is made no later than one year following service as  
2 a justice or judge. The commission shall have jurisdiction  
3 regarding allegations of incapacity during service as a  
4 justice or judge. The commission shall be composed of:

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

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

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

15       (2) The members of the judicial qualifications  
16 commission shall serve staggered terms, not to exceed six  
17 years, as prescribed by general law. No member of the  
18 commission except a judge shall be eligible for state judicial  
19 office while acting as a member of the commission and for a  
20 period of two years thereafter. No member of the commission  
21 shall hold office in a political party or participate in any  
22 campaign for judicial office or hold public office; provided  
23 that a judge may campaign for judicial office and hold that  
24 office. The commission shall elect one of its members as its  
25 chairperson.

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

30       (4) The commission shall adopt rules regulating its  
31 proceedings, the filling of vacancies by the appointing

1 authorities, the disqualification of members, the rotation of  
2 members between the panels, and the temporary replacement of  
3 disqualified or incapacitated members. The commission's  
4 rules, or any part thereof, may be repealed by general law  
5 enacted by a majority vote of the membership of each house of  
6 the legislature, or by the supreme court, five justices  
7 concurring. The commission shall have power to issue  
8 subpoenas. Until formal charges against a justice or judge are  
9 filed by the investigative panel with the clerk of the supreme  
10 court of Florida all proceedings by or before the commission  
11 shall be confidential; provided, however, upon a finding of  
12 probable cause and the filing by the investigative panel with  
13 said clerk of such formal charges against a justice or judge  
14 such charges and all further proceedings before the commission  
15 shall be public.

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

24 (b) PANELS.--The commission shall be divided into an  
25 investigative panel and a hearing panel as established by rule  
26 of the commission. The investigative panel is vested with the  
27 jurisdiction to receive or initiate complaints, conduct  
28 investigations, dismiss complaints, and upon a vote of a  
29 simple majority of the panel submit formal charges to the  
30 hearing panel. The hearing panel is vested with the authority  
31 to receive and hear formal charges from the investigative

1 panel and upon a two-thirds vote of the panel recommend to the  
2 supreme court the removal of a justice or judge or the  
3 involuntary retirement of a justice or judge for any permanent  
4 disability that seriously interferes with the performance of  
5 judicial duties. Upon a simple majority vote of the membership  
6 of the hearing panel, the panel may recommend to the supreme  
7 court that the justice or judge be subject to appropriate  
8 discipline.

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

12 (1) The supreme court may accept, reject, or modify in  
13 whole or in part the findings, conclusions, and  
14 recommendations of the commission and it may order that the  
15 justice or judge be subjected to appropriate discipline, or be  
16 removed from office with termination of compensation for  
17 willful or persistent failure to perform judicial duties or  
18 for other conduct unbecoming a member of the judiciary  
19 demonstrating a present unfitness to hold office, or be  
20 involuntarily retired for any permanent disability that  
21 seriously interferes with the performance of judicial duties.  
22 Malafides, scienter or moral turpitude on the part of a  
23 justice or judge shall not be required for removal from office  
24 of a justice or judge whose conduct demonstrates a present  
25 unfitness to hold office. After the filing of a formal  
26 proceeding and upon request of the investigative panel, the  
27 supreme court may suspend the justice or judge from office,  
28 with or without compensation, pending final determination of  
29 the inquiry.

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

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

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

23           (f) SCHEDULE TO SECTION 12.--

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

29           (2) After this section becomes effective and until  
30 adopted by rule of the commission consistent with it:  
31

- 1           a. The commission shall be divided, as determined by  
2 the chairperson, into one investigative panel and one hearing  
3 panel to meet the responsibilities set forth in this section.
- 4           b. The investigative panel shall be composed of:
- 5           1. Four judges,  
6           2. Two members of the bar of Florida, and  
7           3. Three non-lawyers.
- 8           c. The hearing panel shall be composed of:
- 9           1. Two judges,  
10           2. Two members of the bar of Florida, and  
11           3. Two non-lawyers.
- 12           d. Membership on the panels may rotate in a manner  
13 determined by the rules of the commission provided that no  
14 member shall vote as a member of the investigative and hearing  
15 panel on the same proceeding.
- 16           e. The commission shall hire separate staff for each  
17 panel.
- 18           f. The members of the commission shall serve for  
19 staggered terms of six years.
- 20           g. The terms of office of the present members of the  
21 judicial qualifications commission shall expire upon the  
22 effective date of the amendments to this section approved by  
23 the legislature during the regular session of the legislature  
24 in 1996 and new members shall be appointed to serve the  
25 following staggered terms:
- 26           1. Group I.--The terms of five members, composed of  
27 two electors as set forth in s. 12(a)(1)c. of Article V, one  
28 member of the bar of Florida as set forth in s. 12(a)(1)b. of  
29 Article V, one judge from the district courts of appeal and  
30 one circuit judge as set forth in s. 12(a)(1)a. of Article V,  
31 shall expire on December 31, 1998.

1           2. Group II.--The terms of five members, composed of  
2 one elector as set forth in s. 12(a)(1)c. of Article V, two  
3 members ~~one member~~ of the bar of Florida as set forth in s.  
4 12(a)(1)b. of Article V, one circuit judge and one county  
5 judge as set forth in s. 12(a)(1)a. of Article V shall expire  
6 on December 31, 2000.

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

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

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

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

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