

By Commissioner Barkdull

1                                   A proposal to revise  
2       ARTICLE V, s. 12, Fla. Const.; providing for  
3       the inclusion of two members of The Florida Bar  
4       on group II of the judicial qualifications  
5       commission.

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7   It is proposed by the Florida Constitution Revision Commission  
8   that:

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10       Section 1. Section 12 of Article V of the Florida  
11   Constitution is revised by amending that section to read:

12                                   ARTICLE V

13                                   JUDICIARY

14       SECTION 12. Discipline; removal and retirement.--

15       (a) JUDICIAL QUALIFICATIONS COMMISSION.--A judicial  
16   qualifications commission is created.

17       (1) There shall be a judicial qualifications  
18   commission vested with jurisdiction to investigate and  
19   recommend to the Supreme Court of Florida the removal from  
20   office of any justice or judge whose conduct, during term of  
21   office or otherwise occurring on or after November 1, 1966,  
22   (without regard to the effective date of this section)  
23   demonstrates a present unfitness to hold office, and to  
24   investigate and recommend the discipline of a justice or judge  
25   whose conduct, during term of office or otherwise occurring on  
26   or after November 1, 1966 (without regard to the effective  
27   date of this section), warrants such discipline. For purposes  
28   of this section, discipline is defined as any or all of the  
29   following: reprimand, fine, suspension with or without pay, or  
30   lawyer discipline. The commission shall have jurisdiction over  
31   justices and judges regarding allegations that misconduct

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           (f) SCHEDULE TO SECTION 12.--

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

1 one circuit judge as set forth in s. 12(a)(1)a. of Article V,  
2 shall expire on December 31, 1998.

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

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

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

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

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

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