

**Constitution Revision Commission  
Executive Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: CS/P 47

Relating to: JUDICIARY, Eligibility; SCHEDULE, creates new section

Introducer(s): Commissioner Schifino

Article/Section affected: Article V, section 8; Article XII, creates new section

Date: January 24, 2018

	REFERENCE	ACTION
1.	<u>JU</u>	<b>Favorable</b>
2.	<u>EX</u>	<b>Fav/CS</b>

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**I. SUMMARY:**

The proposal revises section 8 of Article V of the Florida Constitution to require that a person be a member of the bar in any state or territory of the United States during the preceding ten years in order to be eligible to serve as a circuit or county court judge. The proposal applies prospectively from January 8, 2019, for circuit and county court judges.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

Article V, section 8 of the Florida Constitution requires that Supreme Court justices and district court of appeal judges must have been members of the Florida Bar for the preceding ten years, in order to be eligible to serve.<sup>1</sup> However, the Florida Constitution requires that a person must have been a member of the Florida Bar for only the preceding five years to be eligible for the office of circuit judge.<sup>2</sup> The same five-year requirement applies to county court judges, unless the county has a population of 40,000 or less.<sup>3</sup> In a county with a population of 40,000 or less, a person is eligible for the office of county court judge if the person is a member in good standing of the Florida Bar.<sup>4</sup>

The bar membership requirements for justices, district court of appeal judges, and circuit judges in the 1968 Constitution were consistent with the current requirements, however

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<sup>1</sup> Article V, s. 8, FLA. CONST.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* See also s. 34.021, F.S.

<sup>4</sup> *Id.* See also s. 34.021, F.S.

county court judges were not required to be members of the Florida Bar.<sup>5</sup> A constitutional amendment passed in 1972 established a requirement for county court judges to be members of the Florida Bar.<sup>6</sup> Another constitutional amendment effective in 1985 expanded the five year practice requirement to county judges but excepted county judges in counties with a population under 40,000 unless otherwise provided in general law.<sup>7</sup>

The Supreme Court has interpreted the membership requirement to mean that the judicial candidate has had the opportunity to practice law.<sup>8</sup> If a candidate has been suspended from the practice of law, but remains a member of the bar during that suspension, the eligibility clock starts over once that member is once again allowed to practice law.<sup>9</sup>

Florida has twenty judicial circuits and one county court for each of its sixty-seven counties. According to the most recent population estimates by the Office of Economic and Demographic Research, there are 21 counties with a population of 40,000 or less,<sup>10</sup> resulting in 66 courts that currently require five years of Florida Bar membership for judges. The number of judges in each circuit or county is dependent upon the population and caseload of the jurisdiction. For example, the 13<sup>th</sup> Judicial Circuit and Hillsborough County Courts, which cover the same jurisdiction, comprise 60 circuit and county court judges.<sup>11</sup> In comparison, the five District Courts of Appeals and the Supreme Court, which currently require bar membership for the preceding ten years, comprise 70 judges and justices.<sup>12</sup>

## **B. EFFECT OF PROPOSED CHANGES:**

The proposal requires a candidate for circuit or county court judge to be a member of the bar in any state or territory of the United States during the preceding ten years. This change may decrease the number of people eligible to serve as county and circuit court judges. Existing requirements for candidates for circuit or county court judge to be a member of the Florida Bar during the preceding five years remain unchanged. In a county with a population of 40,000 or less, a candidate continues to be eligible for the office of county court judge if the person is a member in good standing of the Florida Bar.

The proposal provides that the revised qualifications apply prospectively for circuit and county court judges starting January 8, 2019. The ten year bar membership requirement does not apply to persons who assume the office of circuit judge or county court judge on

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<sup>5</sup> Article V, s. 13A, FLA. CONST. (1968).

<sup>6</sup> Senate Joint Resolution 52-D (1971), adopted by voters at the March 14, 1972, election. The 1972 amendment consolidated the trial courts and made that requirement applicable to many more judicial officers.

<sup>7</sup> House Joint Resolution 37 (1984), adopted by voters at the November 6, 1984, election. Judicial Impact Statement from Office of the State Court Administrator on file with the CRC.

<sup>8</sup> Advisory Opinion to the Governor Re Commission of Elected Judge, 17 So.3d 265 (Fla. 2009).

<sup>9</sup> *Id.*

<sup>10</sup> Office of Economic and Demographic Research, *Florida Population Estimates for Counties and Municipalities*, April 1, 2017, [http://edr.state.fl.us/content/population-demographics/data/2017\\_Pop\\_Estimates.pdf](http://edr.state.fl.us/content/population-demographics/data/2017_Pop_Estimates.pdf) (last visited 1/15/2018).

<sup>11</sup> See Circuit & County Courts of the Thirteenth Judicial Circuit (Alpha), [www.fljud13.org/Portals/0/Forms/pdfs/directory-alpha.pdf](http://www.fljud13.org/Portals/0/Forms/pdfs/directory-alpha.pdf) (last visited 1/15/2018).

<sup>12</sup> Florida's five District Courts of Appeals currently comprise 15, 15, 10, 12, and 11 judges, respectively, according to the judge listings on each court's website as of January 15, 2018. Article V, s. 3 of the Florida Constitution provides that the Supreme Court consists of seven justices.

or before January 8, 2019, or to persons nominated by a judicial nominating commission, but who have not yet assumed office as of January 8, 2019.

**C. FISCAL IMPACT:**

None.

**III. Additional Information:**

**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

**Executive Committee on January 19, 2018:**

The amended proposal requires ten years of bar membership in any state or territory of the United States, instead of ten years membership in the Florida Bar, in order to be eligible to serve as a circuit or county court judge.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.