

**ouConstitution Revision Commission  
Judicial Committee  
Proposal Analysis**

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

Proposal #: P 47

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

Introducer(s): Commissioner Schifino

Article/Section affected:

Date: November 22, 2017

	REFERENCE	ACTION
1.	JU	<b>Pre-meeting</b>
2.	EX	

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**I. SUMMARY:**

A proposal to amend section 8 of Article V to require that a person be a member of the Florida Bar for the preceding ten years in order to be eligible to serve in the Judiciary. This proposal will apply prospectively from January 8, 2019 for circuit and county court judges.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

As it currently reads, the 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 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> The legislature has not amended the constitutional membership requirement for candidates filling a county court judgeship in a county with a population of 40,000 or less.<sup>4</sup>

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<sup>1</sup> Art. V, § 8, Fla. Const.

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

<sup>3</sup> *Id.*

<sup>4</sup> Fla. Stat. § 34.021.

The 1972 constitution required a circuit judge to be a member of The Florida Bar for five years but county court judges only had to be members of The Florida Bar.<sup>5</sup> Another 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>6</sup>

The Supreme Court has interpreted the membership requirement to mean that the judicial candidate has had the opportunity to practice law. 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>7</sup>

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

This proposed amendment will require a candidate for any judicial position to be a practice eligible member of the Florida Bar during the preceding ten years. This proposal will have the effect of lengthening the bar membership required of county and circuit judge candidates by five years except for county court judges in counties with a population of 40,000 or less. This will decrease the number of people eligible to serve as county and circuit court judges.

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

Florida has twenty judicial circuits and one county court for each of its sixty-seven counties, which combine for eighty-seven courts that currently require five years of Florida Bar membership. 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> Circuit and Hillsborough County Courts, which cover the same jurisdiction, combine for about fifty circuit and county court judges. In comparison, the five District Courts of Appeals and the Supreme Court, which currently require bar membership for the preceding ten years, combine for sixty-five judges and justices.

## **C. FISCAL IMPACT:**

None.

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<sup>5</sup> Talbot D'Alemberte, *The Florida State Constitution*, 172-73 (2nd ed. 2017) (The 1966 constitution required five years of bar membership for circuit judges and the 1972 amendment consolidated the trial courts and made that requirement applicable to many more judicial officers.).

<sup>6</sup> Judicial Impact Statement from Office of the State Court Administrator on file with the CRC.

<sup>7</sup> 17 Advisory Opinion to the Governor Re Commission of Elected Judge, 17 So.3d 265 (Fla. 2009).

**III. Additional Information:**

**A. Statement of Changes:**

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

None.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.