

**Constitution 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 102

Relating to: JUDICIARY, District courts of appeal; Vacancies; SCHEDULE, creates new section

Introducer(s): Commissioner Heuchan

Article/Section affected:

Date: January 9, 2018

	REFERENCE	ACTION
1.	JU	Pre-meeting
2.	EE	

I. SUMMARY:

The proposal amends Sections 4 and 11 of Article V and creates a new section in Article XII of the State Constitution to revise the minimum amount of judges for each district court of appeal and have at least one judge from each judicial circuit in the court's territorial jurisdiction, and to require that each judicial nominating commission of a district court of appeal have at least one member from each judicial circuit in the court's territorial jurisdiction.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Constitution presently mandates that a District Court of Appeal shall consist of at least 3 judges, but may contain more as needed by their workload.¹

Currently, each District Court of Appeal has well above the six judges that would be a minimum under the proposed amendment.¹

Circuit representation on each court: On the Third, Fourth and Fifth DCAs, each circuit within each court's territorial jurisdiction is currently represented. However, it appears that no judge from the Eighth or Fourteenth Judicial Circuit currently sit on the First DCA.² In addition, no judge from the Twelfth Judicial Circuit currently sits on the Second DCA.³

¹ Fla. Const Art V §4

² Judicial Impact Statement prepared by the Office of the State Court Administrator (on file with CRC staff).

³ Id.

B. EFFECT OF PROPOSED CHANGES:

The composition of the DCAs would be mandated by the proposal's requirements because the geographical representation must be accounted for before consideration of any other criteria. The effect on the judiciary and judicial branch would depend on the decision of judges leaving the bench and those appointed to fill those seats. If vacancies in the DCAs come open and if judges from the geographic areas necessary to satisfy the provisions of the proposed amendment are chosen it is possible that the proposal would have limited to no practical effect.

The phrase "[e]ach district court of appeal must have at least one judge from each judicial circuit in the court's territorial jurisdiction" could reasonably be interpreted to mean that each circuit must be represented on its respective DCA by an individual who is a resident of the territorial jurisdiction or has served as a judge in that judicial circuit. This would result in vacancies on the DCAs where only candidates who have been judges in the respective judicial circuits or residents of those circuits may be considered for the vacancies. If the provision is interpreted to mean judges from the circuit as opposed to residents, the provision would eliminate non-judges from consideration for some vacancies. The proposed amendment would be effective on January 1, 2020.

C. FISCAL IMPACT:

The proposal would not impact on the judiciary because it does not expressly change the actual number of judges in any of the DCAs. However, the proposal would have a fiscal impact if judicial seats were added to any of the courts to provide vacancies to accomplish the geographic representation, thereby requiring additional office space and staff.⁴

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:

The proposal states, "Each district court of appeal must have at least one judge from each judicial circuit in the court's territorial jurisdiction." That could lead more than one interpretation of the requirement. It is unclear whether it must be a judge from the circuit, must be a resident of the circuit as of the time of appointment, must practice law primarily within the circuit, or must be "from" the circuit in another manner.

⁴ Id.

D. Related Issues:

None.
