O.A. 5-31-96 047

IN THE SUPREME COURT OF FLORIDA

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SID J. WHITE
MAY 8 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN RE: PROPOSED AMENDMENTS
TO THE FLORIDA RULES OF
JUDICIAL ADMINISTRATION

CASE NO.: 87,678

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COMMENT CONCERNING PROPOSED AMENDMENT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.050(c)

The undersigned chief judge of the Thirteenth Judicial Circuit hereby files this comment regarding the proposed amendment to Florida Rule of Judicial Administration 2.050(c), and states:

The undersigned was elected chief judge of the Thirteenth Judicial Circuit in 1988 by special election and was re-elected as chief judge in 1989, 1991, 1993, and 1995. The undersigned was unopposed in three of the last four elections for chief judge.

The Florida Rules of Judicial Administration Committee (hereinafter "Committee") has proposed the following change to Rule 2.050(c):

RULE 2.050(c) Selection.

The chief judge shall be chosen by a majority of the circuit and county court judges within the circuit for a term of 2 years commencing on July 1 of each odd-numbered year, or if there is no majority, by the chief justice, for a term of 2 years. The election for chief judge shall be held no sooner than February 1 of the year during which the chief judge's term commences beginning July 1. Any circuit or county court judge may nominate a candidate for chief judge and proxy voting shall be permitted. A chief judge may be removed as chief judge by the supreme court, acting as the administrative supervisory body of all courts, or may be removed by a two-thirds vote of the active judges. The purpose of this rule is to fix a 2-year cycle for the selection of the chief judge in each circuit. ~~A chief judge may serve for successive terms~~ No person who has served as chief judge for 4 years in 2 consecutive terms shall be nominated as a candidate for a succeeding term unless agreed to by two-thirds vote of the active judges of the circuit. Such

vote shall be conducted by secret ballot and shall be taken at least 9 months prior to the election in which a third consecutive term is being sought. The selection of the chief judge should be based on managerial, administrative, and leadership abilities. A chief judge who is to be temporarily absent shall select an acting chief judge from among the circuit judges. If a chief judge dies, retires, fails to appoint an acting chief judge during an absence, or is unable to perform the duties of the office, the chief justice of the supreme court shall appoint a circuit judge to act as chief judge during the absence or disability, or until a successor chief judge is elected to serve the unexpired term. When the office of chief judge is temporarily vacant pending action within the scope of this paragraph, the duties of court administration shall be performed by the circuit judge having the longest continuous service as a judge or by another circuit judge designated by that judge.

I. THE PROPOSED AMENDMENT TO RULE 2.050(C) IS UNNECESSARY.

It is curious to note that the proposed amendment regarding the selection of chief judges comes from The Florida Bar and the Committee, rather than from the Conference of Circuit Court Judges or the Conference of County Court Judges. I respectfully submit that The Florida Bar has no business in deciding how judges select their own leaders. If the current method of selecting chief judges is a concern to the trial judges in Florida, then proposed amendments should be discussed in both judges' Conferences before the Rule is so drastically changed.

The only judicial support for the proposed amendment seems to be limited to some of the judges responding to a 1994 confidential survey on the issue of chief judge term limits. Of those judges who responded, only 52% were in favor of limiting the number of terms a judge can serve as chief judge of a circuit. A fifty-two percent vote does not translate into a mandate for such an extreme change, especially when such vote could have come from a minority of circuits. Furthermore, without knowing the response rate of the survey, this fifty-two percent may actually represent a minority of trial judges in Florida. Other than this inconclusive statistic, there is no valid reason to change the way chief judges are selected by the trial courts.

The court should follow the adage that "if it ain't broke, don't fix it." Rule 2.050(c) (hereinafter "the Rule") already provides an effective and fair method of selecting the chief judge of a judicial circuit. The Rule provides that the chief judge be elected by a majority of the circuit and county judges within the circuit every two years, i.e. a simple majority vote. The majority rule has worked well -- the judges in each circuit have been free to elect whomever they desire to be chief judge. Rule-mandated term limits are unnecessary because every two years, the judges within each circuit already have the ability to limit an incumbent chief judge's term. While it is my understanding that some circuits have unwritten policies limiting the term(s) of its chief judge, I strongly believe that each circuit should decide for itself if it wants to implement chief judge term limits.

The proposed amendment allows for the very real possibility that a judge with previous experience as chief judge and who is supported by a majority of the circuit and county judges within the circuit will not even be allowed to be considered for the chief judgeship. The proposed rule will prevent a judge, whom a majority of circuit and county judges within the circuit may determine possesses the managerial, administrative, and leadership abilities necessary to be chief judge, from being considered solely because of the number of years of experience that judge has attained being chief judge. The proposed amendment effectively creates a penalty for experience. With the ever increasing demands placed upon chief judges (especially in large circuits), now is bad timing for limiting such valuable experience.

Based on the foregoing, I respectfully suggest that Rule 2.050(c) does not need to be amended. I hope that each circuit is allowed to determine if and when term limits for chief judge are needed.

II. IF ADOPTED, THE PROPOSED AMENDMENT TO RULE 2.050(C) SHOULD BE APPLIED PROSPECTIVELY.

If the court decides to adopt the proposed amendment to Rule 2.050(c), then I respectfully suggest that the court clarify in a commentary that the Rule should only be applied prospectively so that a person's years of service as chief judge for purposes of this rule would begin to accrue only after the effective date of the amendment. A retroactive application of the Rule would be unworkable in circuits whose chief judge has served as chief judge for at least four consecutive years and who seeks nomination as candidate for another term as chief judge.

According to the Rule (both the current version and the proposed amendment), the next election for chief judge in each of the judicial circuits will occur sometime between February 1, 1997, and July 1, 1997. The long-standing practice in the Thirteenth Judicial Circuit has been to hold the election for chief judge in February of each odd-numbered year. If the proposed amendment applied retroactively and the election for chief judge was to be held in February 1997, the undersigned would not be able to be nominated as a candidate for a succeeding term as chief judge unless agreed to by two-thirds of the active judges of the Thirteenth Circuit at a vote by secret ballot that would have to be taken by **May 1996.**

Thus, a retroactive application of the proposed amendment would require that a secret vote on the undersigned's nomination be held before the effective date of the Rule. Even if the next election for chief judge is not held until June 1997[1], a secret vote on the undersigned's nomination

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[1] Waiting until June to hold the chief judge election would create administrative and logistical problems if there was a new chief judge elected.

would still have to be held by October 1996.[2]

Notwithstanding the lack of necessity of the proposed amendment to Rule 2.050(c), if the proposed amendment is adopted, it would be wise to include a "grand fathering" clause in a commentary to indicate that the Rule does not apply retroactively.

Wherefore, the undersigned respectfully requests the court to reject the proposed amendment to Rule 2.050(c), or, in the alternative, provide that the Rule will only apply prospectively from the effective date.

Respectfully submitted this 6th day of May, 1996.

F. Dennis Alvarez, Chief Judge
Thirteenth Judicial Circuit

[2] Unless the amendments to the Rule are to be effective before October 1996, a retroactive application of the Rule would still be unworkable because it would require that a secret vote on the undersigned's nomination be held before the effective date of the Rule.