THE SUPREME COURT'S

ARTICLE V REVIEW COMMISSION

FINAL REPORT

FEBRUARY 1, 1984

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Introduction

The Article V Review Commission was given the responsibility to review and evaluate the judicial article of the Florida Constitution. The Commission was asked not only to suggest solutions for the problems of today but also to address the needs of tomorrow.

In 1972 the judicial article was substantially revised to consolidate sixteen different trial courts into a two-tier trial court system, improve the method for the selection of judges, expand the disciplinary process for the judiciary, and provide a means to certify the need for additional judges. This new court system has been severely challenged by the substantial population growth that has taken place in Florida during the last ten years. The caseload in the state's circuit courts has increased more than 100 percent during the period from 1973 through 1982 (252,000 cases in 1973, 548,000 cases in 1982), with only 66 new circuit court positions being created to handle the additional 296,000 cases. Florida's appellate courts have also faced caseload growth. In 1972 the caseload in the district courts of appeal was approximately 5,000 cases, while in 1982 the caseload was almost 13,924. Even the supreme court, which had its jurisdiction changed in 1980, has experienced a caseload increase of 25 percent since 1972 (1288 in 1972, 1686 in 1983). Although caseload growth appears to be leveling off, Florida is still a growth state and by 1990 will be the fourth largest state in the union. The projected state population in 1990 is 12 million, and, by the year 2000, Florida will have a projected population of 15 million. Florida's growth will continue to require expansion of the judicial system.

The Article V Review Commission was created by Chief Justice James E. Alderman with an understanding that, although the system has apparently performed well under the adverse circumstances of substantial growth, there should be an evaluation of Florida's ten-year experience under the present judicial article. The Chief Justice recognized that the Florida court system is generally viewed as one of the most modern and efficient in the nation. He advised the Commission that it "should be open to new ideas and ways of improving our judicial article," but that it should also keep in mind that "our state constitution . . . should not be amended precipitously or without very careful study." The Commission was directed to "make a comprehensive review and evaluation of all sections of article V of the Florida Constitution" and to submit its report by February 1, 1984.

In reviewing the judicial article, it is necessary to recognize four distinct factors which are essential to the credibility of the courts individually and the justice system generally. First, there must be access to the judicial system by

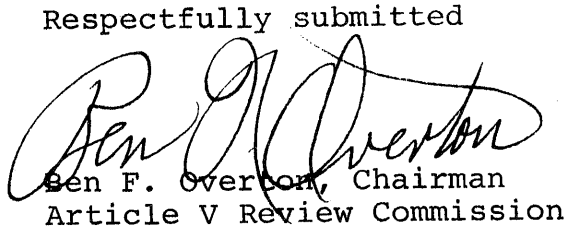
all segments of the population, and we must make sure that our courts are both available and affordable to rich, poor, and middle-class alike. Second, there must be means available to assure that the decisions of the courts will be consistent and predictable, meaning that where the facts are the same the results should be the same. Third, the courts must be able to act in an expeditious manner. These first three factors deal with the quality of the work product of the court system. The fourth factor is as important and requires that persons of quality and competence be available to serve in the judiciary. All of these factors have been utilized by the Commission in evaluating Florida's judicial article.

The Commission sought information from the public at seven hearings, obtained up-to-date statistical information from the supreme court's administrative offices, and obtained statistical information from the chief justices of the other nine most populous states. This latter statistical information is contained in the appendix to this report.

In its review, the Commission addressed all issues brought to its attention, including each constitutional proposal introduced in the last session of the legislature. Its action on these issues is reflected in the 24 recommendations set forth in this report. These recommendations contain the constitutional or statutory language or action necessary to implement the proposal, if appropriate, as well as a commentary explaining the reasons for the Commission's action. Under the Commission rules, for a recommendation to be adopted, it had to receive a minimum of 14 votes from the 27-member Commission, irrespective of the number of members present and voting. Minority views on certain recommendations are expressed in minority reports which appear at the end of the Commission's report. The votes on each Commission recommendation are included in the appendix.

The Commission members, consisting of judges, legislators, attorneys, scholars, a journalist, and other individuals identified below, all had a common interest and dedication to assure that Florida will have the best court system in the nation. The members gave of their time and talent to hold public hearings and then in seven meetings where they reviewed, evaluated, and deliberated on the proposals which are contained in this report. Each has performed an invaluable service to the citizens of Florida.

Respectfully submitted



Ben F. Overton, Chairman
Article V Review Commission

Members of the Commission

Ben F. Overton, chairman, has been a justice of the Supreme Court of Florida since 1974 and served as chief justice from 1976-78. He was chairman of the 1978 Florida Appellate Structure Commission and was a member of the 1977 Constitutional Revision Commission.

James E. Alderman has been a justice of the Supreme Court of Florida since 1978 and has served as chief justice since 1982. He has served at all levels of the Florida court system, having been a county court judge of St. Lucie County, a circuit court judge of the Nineteenth Judicial Circuit, and a judge, and chief judge, of the Fourth District Court of Appeal.

John K. Aurell, Tallahassee, served as Governor Graham's general counsel during 1979-80. He is a partner in the law firm of Holland & Knight.

Jeffrey H. Barker, a Tallahassee lawyer, is the director of Florida Legal Services, Inc.

William C. Clark served as chairman of the Florida Judicial Qualifications Commission and served on the National Advisory Committee, Center for Judicial Conduct Organizations, of the American Judicature Society. He is president of Cornelius, Johnson and Clark, Inc., and chairman of the board of Flagler National Bank of the Palm Beaches, West Palm Beach.

Marshall M. Criser is the president-designate of the University of Florida; he was president of The Florida Bar from 1968-69, was a member of the Board of Regents from 1971-81, and was chairman of that Board from 1974-77. He is a partner in the law firm of Gunster, Yoakley, Criser & Stewart, Palm Beach, Florida.

Talbot D'Alemberte was the chairman of the Florida Constitutional Revision Commission in 1977-78 and was a member of the House of Representatives and served as chairman of the House Judiciary Committee from 1970-72. He is president of the American Judicature Society and a partner in the law firm of Steel, Hector & Davis, Miami, Florida.

Patricia C. Fawsett is the president of the Florida Council of Bar Association Presidents and the past president of the Orange County Bar Association. She is a partner in the law firm of Akerman, Senterfitt & Eidson, Orlando, Florida.

Elmer Friday of Fort Myers is a county judge for Lee County which is in the Twentieth Judicial Circuit. He is a former member of the Florida Senate and of the Florida Industrial Relations Commission. He also served on the 1966 Florida Constitutional Revision Commission.

Louis O. Frost, Jr. of Jacksonville has been the public defender of the Fourth Judicial Circuit since 1968. He is a member of the Supreme Court's Judicial Coordinating Council and is a past chairman of the Criminal Law Section of The Florida Bar.

Andrew L. Gordon is an associate with the law firm of Shutts & Bowen, Miami. He serves on the Board of Directors of Legal Services of Greater Miami and serves as its secretary.

Stephen H. Grimes of Lakeland has been a judge on the District Court of Appeal, Second District, since 1973, and was the chief judge of that court from 1978-80. He is a past chairman of the Conference of District Court of Appeal Judges and was a member of the Supreme Court's Commission on the Florida Appellate Structure. He was vice chairman of The Florida Bar Appellate Rules committee.

Charlotte Hubbard, residing in Dunedin, is a nonlawyer who has served as chairperson of the Supreme Court Nominating Commission. She has held various leadership posts in the League of Women Voters.

Eleanor Hunter of Tallahassee is a member of the Florida Board of Bar Examiners. She has served as assistant general counsel to Governor Askew and as administrative assistant to the chief justice of the Florida Supreme Court.

Dean Joseph R. Julin is dean emeritus and a professor of law at the University of Florida College of Law, Gainesville.

Frederick B. Karl was a justice of the Supreme Court from 1977-78. He was a state senator during the period when the judicial article was adopted. He also served as a state representative from Volusia County for eight years, and as public counsel in Public Service Commission matters. He is vice president and general counsel of the Florida Association of Insurance Agents in Tallahassee.

Gavin Letts of West Palm Beach is a judge of the District Court of Appeal, Fourth District, and formerly served as its chief judge. He is the president of the Florida Conference of District Court of Appeal Judges.

Gwen Margolis has been a state senator since 1980. She is chairman of the Finance & Tax Committee of the Florida Senate. She served in the Florida House of Representatives from 1974-80, and was the Dade County Delegation Chairman in 1978-79. She is a realtor, appraiser, and developer in Miami, Florida.

Janet Reno of Miami is the state attorney for the Eleventh Judicial Circuit. She was staff director of the Judicial Committee of the Florida House of Representatives from 1971-72, and was instrumental in drafting portions of the present judicial article. She has also served as chairman of the Governor's Council for the Prosecution of Organized Crime.

Gerald F. Richman, a Miami lawyer, is the president-elect of The Florida Bar. He is a partner in the firm of Floyd, Pearson, Stewart, Greer & Weil.

Ronald R. Richmond has been a member of the House of Representatives since 1972 and presently serves as minority leader. He is past chairman of The Florida Bar Standing Committee on the Unauthorized Practice of Law. He is a partner in the law firm of Martin, Richmond, Booth, Cook & Figurski in Holiday, Pasco County.

James A. Scott has been a member of the Florida Senate since 1976 and presently is chairman of the Judiciary Civil Committee in the Senate. He is a lawyer in Fort Lauderdale and a partner in the firm of Tripp, Scott, Conklin & Smith.

James C. Smith of Tallahassee has been the attorney general for the state of Florida since 1979. He served as chairman of the Governor's Advisory Committee on Corrections and as co-chairman of the Task Force on Criminal Justice System Reform.

Dr. Walter Smith from Tallahassee is the president of Florida A & M University and is the former chairman of the Supreme Court Nominating Commission.

Robert M. Stiff from St. Petersburg has been editor in chief of the Evening Independent for sixteen years. He was selected to serve on the Pulitzer Prize Jury for Journalism in 1982 and 1983. He is past president of

the Florida Society of Newspaper Editors and the Associated Press Association of Florida. He is on the board of directors of the American Society of Newspaper Editors.

Hamilton D. Upchurch has been a member of the Florida House of Representatives since 1978. He is chairman of the House Judiciary Committee and is a member of the Criminal Justice Committee. He is a partner in the law firm of Upchurch, Bailey & Upchurch, St. Augustine.

Theron A. Yawn of Gainesville has been a circuit judge for the Eighth Judicial Circuit since 1972 and is the immediate past chairman of the Florida Conference of Circuit Judges. He was chief judge of the Eighth Circuit from July 1977 to July 1981.

Commission Staff

Michael D. L. Olafson
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Trial Court Structure

1. RECOMMENDATION:

IT IS RECOMMENDED THAT, IN ORDER TO IMPROVE THE LEGAL EXPERIENCE AND KNOWLEDGE OF TRIAL COURT JUDGES, THE ELIGIBILITY REQUIREMENT BE INCREASED TO PROVIDE THAT COUNTY COURT JUDGES BE MEMBERS OF THE FLORIDA BAR FOR FIVE YEARS AND THAT CIRCUIT JUDGES BE MEMBERS OF THE FLORIDA BAR FOR TEN YEARS.

The following amendment is proposed to implement this recommendation:

SECTION 8. Eligibility.--No person shall be eligible for office of justice or judge of any court unless he is an elector of the state and resides in the territorial jurisdiction of his court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which he has served. No person is eligible for the office of justice of the supreme court, ~~or~~ judge of a district court of appeal, or judge of the circuit court unless he is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of ~~circuit~~ county court judge unless he is, and has been for the preceding five years, a member of the bar of Florida. ~~Unless otherwise provided by general law, a county court judge must be a member of the bar of Florida.~~

Schedule to Article V, Section 8.-- Any circuit court or county court judge who is in office at the date of the adoption of this constitutional provision shall be eligible to qualify and continue to serve in his or her current office as a circuit court or a county court judge.

Commentary: As presently written, article V, Section 8, provides that to be eligible to serve, a circuit court judge must be a member of the bar of Florida for five years and that a county court judge must be a member of the bar of Florida unless otherwise provided by general law. Pursuant to the "unless otherwise provided by general law" language, the legislature enacted section 34.021, Florida Statutes. Subsection (1) of section 34.021 provides that no person shall be eligible for election or appointment to the office of county court judge unless the person is a member of the bar of Florida prior to qualifying for election or submitting his name to the judicial nominating commission for appointment. Subsection (2) provides that a county court judge who is not a member of The Florida Bar is eligible to seek re-election if on the first day of the qualification period for election to the office, the judge is actively serving in the office and is not under suspension or disqualification. Subsection (3) provides that any person who was a county court judge prior to July 1, 1978, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a three-year law training program approved by the supreme court for the training of county court judges who are not members of The Florida Bar shall be entitled to such election and to serve as a county court judge in any county having a population of 40,000 or less.

Subsection (4) provides that a non-lawyer county judge who is eligible for office under subsection (3) shall be entitled to serve as a county court judge in any county encompassed in the circuit in which he has been elected, when assigned thereto. Subsection (4) became effective October 1, 1983. See ch. 83-166, § 1, Laws of Fla.

The Commission's recommendation is in substantial accordance with House Joint Resolution 114, introduced in 1983 by Representative Joe Titone, and the Committee Substitute for Senate Joint Resolution 70, introduced in 1983 by Senators Peter Weinstein and James Scott. Both bills proposed increasing county court judge eligibility to five-year bar membership and both contained a

grandfather clause. Circuit court judge eligibility was not a subject of either bill.

The Commission recommends the increase in the eligibility requirement for county court judges for two reasons. First, as a result of population growth and increased urbanization in Florida, county court judges are handling more complicated matters than they once did. Second, increased population has caused increased circuit court caseloads and in many circuits county court judges are called upon to act as circuit court judges. The Commission believes that, because of these factors, a certain level of experience in the practice of law is necessary before an individual is qualified to serve as a county court judge and that these requirements should be written into the constitution. According to statistics presented to the Commission by Senator Weinstein, of all candidates for county court judge in 1982, twelve percent had less than five years' bar membership and three percent were incumbent non-attorney judges, seeking to continue in office. The Commission's proposal, consequently, would not substantially affect the pool of candidates for the office of county court judge. The Commission also believes that the increase in the complexity of the matters handled by the circuit courts and the increase in the circuit court caseload require a particular level of experience prior to service on the circuit bench. An eligibility requirement of ten years of bar membership, commensurate with the eligibility requirement for supreme court justices and district court judges, ensures that candidates for the office of circuit court judge have the necessary experience. (See alternative proposal for Recommendation 1 in Appendix.)

2. RECOMMENDATION:

WE RECOMMEND THAT THE ENTIRE JUDICIAL SYSTEM BE UNDER THE MERIT-SELECTION, MERIT-RETENTION PROCESS AND THAT THE MERIT-RETENTION PROCESS BE IMPLEMENTED FOR ALL TRIAL COURT JUDGES.

To implement this recommendation the following amendment to the constitution should be adopted:

SECTION 10. Retention; election and terms.--

(a) Any justice of the supreme court or any judge of a district court of appeal, circuit court, or county court may qualify for retention by a vote

of the electors in the general election next preceding the expiration of his term in the manner prescribed by law. If a justice or judge is ineligible or fails to qualify for retention, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice of the supreme court or a judge of a district court of appeal, circuit court, or county court so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) (name of justice or judge) ~~of the (name of the court)~~ continue ~~be retained~~ in office as Justice (or Judge) of the (name of the court)?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years commencing on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

~~(b) Circuit judges and judges of county courts shall be elected by vote of the qualified electors within the territorial jurisdiction of their~~

~~respective courts. The terms of circuit judges shall be for six years. The terms of judges of county courts shall be for four years.~~

Commentary: Under the present constitutional scheme, article V, section 10, provides that supreme court justices and district court judges are subject to merit retention and that circuit court and county court judges are popularly elected. The Commission recommends that section 10 be amended to extend to circuit court and county court judges the merit retention system. It is also recommended that, if merit retention is extended to trial judges, the terms of county court judges be equal to the terms of circuit court judges and be increased from four to six years. Ballot language for retention elections set out in section 10 is also changed by the Commission's recommendation, and is in accordance with the language used by the Department of State's Division of Elections.

The Article V Review Commission's recommendation is similar to Senate Joint Resolution 679, introduced in 1983 by Senator Bob Crawford. This bill extended merit retention to circuit court and county court judges, but did not alter the ballot language or increase the terms of county court judges.

The Commission believes that extension of the merit retention system to circuit court and county court judges would improve the quality of Florida's judiciary. A common complaint concerning the election of trial court judges is that where a judge is unopposed, that judge's name is not placed on the ballot and the voters have no say regarding the judge's continuation in office. A merit retention system assures that each judge's name is placed before the voters in elections occurring at the end of the judge's term. The merit retention system also eliminates problems arising from the popular election of judges. First, even where a sitting judge draws opposition, judicial ethics properly prohibit the discussion of any issues which might come before the judge. There is also the problem of the need for judicial candidates to solicit campaign funds from attorneys who may in the future appear before them. Further, competitive elections require judges to be concerned with their name identification like any other incumbent officeholder. Finally, competitive elections for judicial office may discourage competent, qualified attorneys from seeking such a position.

In conjunction with its merit-retention proposal, the Commission passed unanimously a motion that the Commission study and recommend the use of some type of judicial evaluation process in the context of a merit-retention system. The Commission, because of time constraints, has not had the opportunity to conduct an

in-depth study of such an evaluation process. It should be noted that in some states which have a merit-retention system, a formal evaluation of judges seeking retention does take place. The formal evaluation of judges is an evolving area in the merit-selection, merit-retention process. Some of the methods of evaluating judges presently used are discussed in the American Judicature Society's recent Report of the Committee on Qualification Guidelines for Judicial Candidates (1983). Alaska and Colorado use formal judicial evaluation processes in conjunction with merit retention. A formal judicial evaluation process also takes place in the District of Columbia. The New Jersey Supreme Court has been working on implementation of such a process.

3. RECOMMENDATION:

> TO ALLEVIATE DELAYS WHICH NOW OCCUR IN FILLING VACANCIES AND TO ENHANCE THE QUALITY OF THE JUDICIARY, WE RECOMMEND THAT ALL VACANCIES FOR TRIAL COURT JUDGESHIPS BE FILLED THROUGH THE NOMINATING COMMISSION SELECTION PROCESS AND THAT THE GOVERNOR BE ALLOWED TO START THE SELECTION PROCESS TO FILL VACANCIES CREATED BY RESIGNATION AS SOON AS THE RESIGNATION HAS BEEN ACCEPTED. FURTHER, WE RECOMMEND THAT THE NUMBER OF NOMINEES TO BE SUBMITTED TO THE GOVERNOR SHALL BE NO FEWER THAN THREE NOR MORE THAN SIX FOR ALL JUDICIAL POSITIONS.

To implement these recommendations, the following constitutional amendment should be adopted:

SECTION 11. Vacancies.--

(a) The governor shall fill each vacancy on the supreme court, ~~or~~ on a district court of appeal , on a circuit court, or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment, one of not fewer than

three nor more than six persons nominated by the appropriate judicial nominating commission.

~~(b) The governor shall fill each vacancy on a circuit court or on a county court by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election, one of not fewer than three persons nominated by the appropriate judicial nominating commission. An election shall be held to fill that judicial office for the term of the office beginning at the end of the appointed term.~~

~~(c)~~ (b) The nominations shall be made within thirty days from the occurrence of a vacancy or from the acceptance of a resignation by the governor unless the period is extended by the governor for a time not to exceed thirty days. The governor shall make the appointment within sixty days after the nominations have been certified to him.

Commentary: Pursuant to article V, section 11(b), the governor is required to fill each vacancy on a circuit court or on a county court by appointing one of not fewer than three persons nominated by the appropriate judicial nominating commission for a term ending on the first Tuesday after the first Monday in January of the year following the next primary and general election. An election is to be held to fill the judicial office at the end of the appointed term. Under section 11(a), the governor fills each vacancy on the supreme court or on a district court of appeal by appointing one of three persons nominated by the appropriate judicial nominating commission. Section 11(c) sets a time limit for submission of nominees to the governor, as well as a time limit in which the governor must make an appointment.

The Commission's revision of section 11 is intended to accomplish several objectives. First, it is the Commission's belief that the quality of the judiciary in Florida will be improved by requiring the judicial nominating commissions to screen all applicants for judicial vacancies. Presently, vacancies in the circuit and county courts are filled by election whenever a judge retires after completing a term, when the legislature certifies the creation of new trial court judgeships and directs that the new positions be filled by election, and when a vacancy occurs five or more months before the next general election. It is important to note that since the inception of the Judicial Qualifications Commission in 1966, all twenty-three judges whom the Judicial Qualifications Commission recommended be disciplined came to the judiciary via the election process.

Second, the revision combines subsections (a) and (b) in order to make uniform for all courts the number of nominations which may be submitted by the judicial nominating commissions. By inserting the words "not fewer than" in the last clause of subsection (a), the Commission intends to return to the nomination system as it existed prior to the 1976 amendment to article V, section 11. The insertion of the words "nor more than six" limits the maximum number of nominees who can be submitted to the governor.

Third, by placing the circuit and county courts in subsection (a), this revision eliminates the problem of a hiatus period which would exist, under the language of the present subsection (b), when a circuit or county judgeship becomes vacant after the qualifying date for the next general election. See Judicial Nominating Commission, Ninth Circuit v. Graham, 424 So. 2d 10 (Fla. 1982).

Finally, by inserting the language "or from the acceptance of a resignation by the governor" into subsection (c), which becomes subsection (b) under the revision, it is intended that the judicial nominating commissions be permitted to commence the nomination process on the date a resignation is accepted instead of having to technically delay the process until the office actually becomes vacant.

It is the intent of the Commission that both merit retention and merit selection be implemented for all levels of the judicial system in Florida. Even if merit retention is not extended to trial courts, the Commission believes that this proposal to fill all vacancies by merit selection can be implemented independently. If merit retention for all judges is not adopted, the Commission notes that the definition of "vacancy," with regard to judgeships, would include the situation in which an incumbent judge chooses not to seek re-election. In that instance, a vacancy in the judicial office would occur when the

period for qualifying for the office ends and the sitting judge has not qualified to seek re-election.

4. RECOMMENDATION:

> WE RECOMMEND THAT THE LEGISLATURE AND THE SUPREME COURT MOVE AGGRESSIVELY TO IMPLEMENT, AT LEAST IN PILOT PROGRAMS, TRIAL COURT ADMINISTERED ALTERNATIVE MEANS FOR DISPUTE RESOLUTION SUCH AS (A) ARBITRATION FOR APPROPRIATE CIVIL ACTIONS; (B) MEDIATION OF DOMESTIC-RELATION DISPUTES, PARTICULARLY CUSTODY ISSUES; AND (C) THE EXPANDED UTILIZATION OF PRE-TRIAL DIVERSION PROGRAMS IN THE CRIMINAL JURISDICTION.

To implement this recommendation we suggest that the legislature and the court, either separately or in a cooperative endeavor, establish a body to prepare legislation and court rules to implement appropriate alternative means for dispute resolution.

Commentary: The Commission heard testimony concerning various alternative means for dispute resolution. These alternative means included arbitration and mediation in certain civil disputes and matrimonial matters, neighborhood dispute resolution centers, and the use of hearing examiners in traffic cases. These alternative means of dispute resolution can not only reduce the caseload burden in Florida's trial courts, but can also lower the cost of legal services to the public.

Chief Justice Warren Burger, in his annual report of January 3, 1984, proposed that many suits be sent to arbitration. Alternative means of dispute resolution are being used in several jurisdictions. In his report, Chief Justice Burger wrote about the arbitration system used in Allegheny County (Pittsburgh), Pennsylvania. Based on information obtained from a Rand Corporation report, he noted that:

> In 1980, approximately 60 percent of all cases filed in the Court of Common Pleas were assigned to arbitration. A hearing date is set when a case is filed with the average time between case filing and arbitration being about three months. Disputants thus know exactly how long they have for settlement negotiations before a third party will intervene. About half of all cases assigned to arbitration in

1980 were resolved without an arbitration hearing. Moreover, the public cost of cases that went to arbitration was dramatically lower than the public cost of a trial. In Allegheny County, the average cost was only $65 per case.

Litigants interviewed as part of the Allegheny County study expressed satisfaction with the arbitration process. The fairness of the hearing, not the presence of a judge or jury in a panelled courtroom, was considered most important. Even though arbitration is nonbinding, the appeal rate in the county is very low. Appeals were filed in approximately one-quarter of the cases, but three-quarters of those were settled or dropped before trial. Experience with court-annexed arbitration has been so successful that in July 1983, the jurisdictional limit for cases qualifying for arbitration was raised from $10,000 to $20,000, and soon may go higher.

In 1979, the California legislature enacted a mandatory arbitration statute. Under the law, those superior courts having ten or more judges were required to order all civil money suits valued at $15,000 or less into arbitration before those cases could be tried. The parties, however, could voluntarily submit to arbitration and did not have to wait until the trial court so ordered. The arbitrator's decision, however, is not binding and either party may reject the arbitrator's decision and demand trial de novo. A statute enacted in 1983 allowed an increase to $25,000 in the value of cases requiring arbitration. Another California statute enacted in 1983 authorizes the issues of the character, value, and division of community property not exceeding $25,000 in dissolution proceedings to be sent to judicial arbitration. A mandatory arbitration system also exists in Michigan. Under the Michigan system, if a party demands a trial de novo following arbitration, that party must better his position by ten percent or pay court costs and the opposing party's attorney's fees. New Hampshire has authorized compulsory arbitration for cases valued at $50,000 or less.

Florida has a voluntary arbitration statute. See ch. 682, Florida Statutes. The arbitration code makes arbitration agreements between two or more parties valid, irrevocable, and enforceable by the courts. The statute, however, is not the equivalent of those in California, Pennsylvania, and Michigan because no provision exists to allow trial courts to direct arbitration where the parties have not agreed to do so. The Florida statute also does not provide for trial de novo. A substantial benefit from this type of program is the apparent savings to the litigants. A Rand Corporation (Institute for Civil Justice) report on court-administered arbitration in

Pittsburgh revealed that arbitration costs a typical litigant approximately $400 to $500, taking into account both legal fees and the cost of the litigant's own time spent at the arbitration hearing. The report also determined that a trial of the arbitrated issue would cost the same litigant approximately $2,000.

The Commission feels that the issue of court-based alternative means for dispute resolution is not properly a subject for constitutional amendment. Further, the Commission has not had the ability to conduct a full scale inquiry regarding this issue. The Commission, however, recognizes the importance of this issue and the use of methods such as arbitration to make the court system more available and affordable to the citizens of Florida.

5. RECOMMENDATION:

TO FURTHER THE OBJECTIVE OF A UNIFORM COURT SYSTEM, IT IS RECOMMENDED THAT SUFFICIENT STATE FUNDING BE PROVIDED TO RELIEVE LOCAL GOVERNMENTS OF APPROPRIATE PORTIONS OF COURT-FUNDING NOW BEING FINANCED PRINCIPALLY BY THE COUNTIES.

Commentary: The Commission heard considerable testimony from county and local government officials concerning the need for the state to provide sufficient funding for state-mandated court costs. The consensus of those who testified on this issue is that since the passage of article V approximately ten years ago, the counties have been faced with ever-increasing costs associated with the operation of the trial courts. These costs have been paid primarily through the use of general revenue funds. The Article V Review Commission does not recommend a constitutional amendment requiring that the state provide sufficient court-funding. Based on the testimony and information submitted to the Commission, however, the Commission passed a motion urging the legislature to relieve local governments of responsibility for the courts' operational expenditures. Some expenditures which may be appropriate for legislative consideration include court reporters' services, attorneys' fees, and witness fees.

6. RECOMMENDATION:

ALTHOUGH WE RECOGNIZE THERE IS CONCERN THAT SOME COUNTY COURTS ARE NOT ADEQUATELY RESPONDING TO THE NEEDS OF MUNICIPALITIES, WE SEE NO JUSTIFICATION FOR A RETURN TO A MUNICIPAL COURT SYSTEM AND WE CONCLUDE THAT

THE PROBLEMS CAN BE SOLVED WITHIN THE PRESENT STRUCTURE.

Commentary: The Commission heard a great deal of testimony both for and against the re-establishment of municipal courts. Additionally, legislation was introduced in the House and the Senate to amend article V, section 1, to permit the use of municipal courts. Both Senate Joint Resolution 725, introduced by Senator James Scott, and House Joint Resolution 604, introduced by Representative Debby Sanderson, would amend section 1 to authorize municipalities having a population in excess of 50,000 to establish municipal courts. It is the recommendation of the Commission that municipal courts not be re-established. Pursuant to the amendment of article V in 1973, the trial court system was streamlined and sixteen different types of trial courts were reorganized into two--the present circuit courts and county courts. At present, Florida Statutes provide municipalities certain methods by which they can seek to assure enforcement of their ordinances. Under section 34.13(5), Florida Statutes (1981), municipal prosecutors may prosecute violations of municipal ordinances. Section 34.181, Florida Statutes (1981), provides that "[a]ny municipality . . . may apply to the chief judge of the circuit in which the municipality . . . is situated for the county court to sit in a location suitable to the municipality . . . and convenient in time and place to its citizens and police officers . . . ." Also, under chapter 166, Part II, Florida Statutes (1981), municipalities may establish code enforcement boards, the decisions of which are appealable to the circuit courts. It does not appear that the municipalities have fully utilized the above means provided them by the legislature to enforce their ordinances. In addition to recommending that municipalities use more fully these statutes, the Commission recommends that the chief judges of the circuits meet with the chief executive officers of the municipalities within their circuits concerning the needs of the respective municipalities with regard to the enforcement of ordinances. Where the needs of the municipalities are not being provided for, the chief judge of the circuit, or the chief executive officer of the municipality, should report the specific problems to the chief justice.

7. RECOMMENDATION:

THE COMMISSION CONSIDERED AND RECOMMENDS AGAINST THE CONSOLIDATION OF THE COUNTY AND CIRCUIT COURTS INTO A SINGLE-TIER TRIAL COURT SYSTEM.

Commentary: We find that the possible benefits of a consolidated trial court system are outweighed by the disadvantages of the

major jurisdictional and structural changes which would be required. Although the cost of such a consolidation would not be substantial, the benefits of a single-tier system would accrue primarily to less populated jurisdictions where one or two judges serve one community. The present constitution provides sufficient flexibility to allow county court judges to serve as circuit court judges, and vice versa, where such a need arises.

Appellate Structure

8. RECOMMENDATION:

> TO ASSURE A BROAD RANGE OF APPLICANTS FOR SUPREME COURT VACANCIES, WE RECOMMEND THAT THE CONSTITUTION BE AMENDED TO REMOVE THE APPELLATE DISTRICT RESIDENCY REQUIREMENTS FOR SUPREME COURT JUSTICES. WE ALSO RECOMMEND THE ELIMINATION OF THE LAST SENTENCE OF SECTION 3(a) OF ARTICLE V. THIS SENTENCE IS UNNECESSARY BECAUSE THE CHIEF JUSTICE HAS AUTHORITY TO MAKE NECESSARY ASSIGNMENTS UNDER SECTION 2(b).

We suggest the adoption of the following amendment to the constitution:

SECTION 3. Supreme court.--

(a) ORGANIZATION.--The supreme court shall consist of seven justices. ~~Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of his original appointment or election.~~ Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. ~~When recusals for cause would prohibit the~~

~~court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.~~

Commentary: The Commission recommends that two changes be made to article V, section 3(a). First, the Commission believes that the residency requirement for supreme court justices should be eliminated by deleting the second sentence of section 3(a). The residency requirement as presently written does not appear to be in the public interest because it may restrict consideration of the best available candidates for appointment to the supreme court. The supreme court is not like a legislative body with members representing a constituency in different geographic areas of the state; the supreme court represents the entire state and the residency requirement is unnecessary.

Second, it is the intent of the Commission that the last sentence of section 3(a), concerning the power to assign judges for temporary duty as justices, be deleted because it is also unnecessary. The chief justice has the authority to make necessary assignments pursuant to his general authority found in article V, section 2(b), and, therefore, this provision is redundant.

9. RECOMMENDATION:

IN ORDER TO PROVIDE THE SUPREME COURT AND THE LEGISLATURE MORE FLEXIBILITY IN DETERMINING THE TYPES OF CASES WHICH SHOULD BE DECIDED BY THE SUPREME COURT, AND TO ASSURE PROPER SUPERVISION OF ONE OF THE LARGEST APPELLATE CASELOADS IN THE COUNTRY, IT IS RECOMMENDED THAT THE CONSTITUTION BE AMENDED TO ALLOW THE SUPREME COURT AND THE LEGISLATURE TO MODIFY THE SUPREME COURT'S JURISDICTION WHEN THE PROPOSED MODIFICATION IS APPROVED BY AT LEAST FIVE JUSTICES AND BY A MAJORITY OF THE MEMBERSHIP OF EACH HOUSE OF THE LEGISLATURE. THIS PROPOSAL WOULD CREATE ARTICLE V, SECTION 3(b)(10). THIS AMENDMENT IS INTENDED TO PROVIDE AN EXPEDITIOUS ALTERNATIVE MEANS FOR CHANGING THE JURISDICTION OF THE SUPREME COURT. THE METHOD OF CHANGING THE SUPREME COURT'S JURISDICTION BY CONSTITUTIONAL AMENDMENT WOULD STILL EXIST. FOR THE REASONS EXPRESSED IN THE COMMENTARY, THE COMMISSION

REJECTED PROPOSALS WHICH WOULD REQUIRE THE SUPREME COURT TO REVIEW PER CURIAM AFFIRMED DECISIONS OF THE DISTRICT COURTS OF APPEAL, THE EXPANSION OF THE JURISDICTION OF THE SUPREME COURT TO ALLOW THE COURT TO REACH DOWN AND REVIEW ANY CASE IN ANY COURT, AND TO EXPAND THE JURISDICTION OF THE COURT TO PERMIT IT TO ADDRESS ANY QUESTION OF EXCEPTIONAL IMPORTANCE.

To implement the recommendation concerning modification of supreme court jurisdiction by rule, the following constitutional amendment is proposed:

(10) The jurisdiction of the supreme court as provided in section 3(b)(1)-(9), or any part thereof, may be changed by the action of both the supreme court and the legislature. Any proposed change must be initiated by the concurrence of not less than five justices of the supreme court and must be approved within one year by a joint resolution of a majority of the membership of each house of the legislature before it will become effective.

Commentary: The Commission heard from a number of persons concerning expansion of the jurisdiction of the supreme court. These persons, mostly lawyers, primarily argued that access to the supreme court is unduly restricted by virtue of the many per curiam affirmed decisions without opinions which are issued by the district courts of appeal.

In the final analysis, the Commission concluded that the supreme court's jurisdiction should not be changed. While some litigants and their lawyers have been aggrieved by being unable to obtain a second review in the supreme court, the Commission concluded that under present practice the supreme court has been able to reach practically every case that needed to come before it for review. While Florida guarantees each litigant a right of review, this does not extend to having the supreme court hear every appeal. With our growing population and a caseload second only to California, if every litigant had a right to review in the

supreme court, that court would be so overwhelmed that it would not have time to decide the truly important cases. See Whipple v. State, 431 So. 2d 1011 (Fla. 2d DCA 1983)(discussion of the proper functions of the district courts of appeal and the supreme court).

The Commission recognizes that, in a burgeoning state such as Florida, changes in the jurisdiction of the supreme court may become necessary from time to time in order to adjust caseloads and meet new problems. The present caseload of the supreme court of Florida is comparable with states of equivalent population. Florida is bracketed in the middle and, if it continues its present growth, could be third by the year 1987, behind California and New York. Even with the passage of the jurisdictional amendment in 1980, the Florida Supreme Court's present caseload is twenty-five percent larger than it was in 1972. The Commission believes that it would be desirable to provide a more flexible way to modify the supreme court's jurisdiction. The Commission recommends that the constitution be amended to allow the supreme court and the legislature to modify the supreme court's jurisdiction when the proposed modification is initiated by the concurrence of not less than five justices and approved within one year by a joint resolution of a majority of the membership of each house of the legislature. This proposal, which would create article V, section 3(b)(10), would provide an expeditious alternative means for changing the jurisdiction of the supreme court. Such a proposal would allow a degree of experimentation because a change in jurisdiction could be made with the knowledge that if it did not meet expectations, it could be altered more quickly than through the traditional method of submitting a constitutional amendment to the voters. The present method of changing the supreme court's jurisdiction by a constitutional amendment would still exist.

The Commission rejected several recommended changes to the current appellate jurisdiction. These recommendations, and the reasons for their rejection, are presented below:

1. Permitting the supreme court to review per curiam affirmed decisions without opinions.--This is the procedure authorized in Foley v. Weaver Drugs, 177 So. 2d 221 (Fla. 1965), in which the supreme court was permitted to review the "record proper" in order to determine whether a per curiam affirmed decision conflicted with a prior opinion of the supreme court or another district court of appeal. This practice created a large backlog of cases in the supreme court and led to the 1980 constitutional amendment eliminating supreme court review of per curiam affirmed decisions. A comparison between 1979 and 1981 indicates that while twice as many petitions for review were filed in the supreme court in 1979, more cases were accepted and disposed of on the merits in 1981. Under the old practice, much of the justices' time was spent needlessly examining trial court

pleadings and other documents to determine whether a per curiam affirmed decision conflicted with another opinion, even though that decision had no precedential value in itself. The new amendment has enabled the supreme court to become more current and at the same time decide more cases. The California Supreme Court, which has broad discretionary authority to review cases of its intermediate appellate courts, in 1982 considered over 3,300 petitions for review, but decided on the merits, in written published opinions, only 123 cases, which is just a little more than one-third the number of cases the Florida Supreme Court decided for the same calendar year (342). It should be recalled that one of the reasons for the 1980 amendment was that the supreme court made a policy decision that it did not want case-screening to be delegated to a central staff or research aides, as now occurs in some major courts of last resort. This delegation of the screening decision is illustrated in a comment by Justice John Paul Stevens that his law clerks "examine them all and select a small minority that they believe I should read myself. As a result I do not even look at the papers in over eighty percent of the cases that are filed." Further, it should be understood that providing a means for a broadened second review would have a fiscal impact, as well as a delay impact on the criminal justice system. Because approximately fifty percent of the appellate cases are criminal matters, expanding how cases in the district courts of appeal may be reviewed would apparently require more attorney staff for the state and the public defenders' offices.

2. Permitting the supreme court to review any opinion of the district courts of appeal which it deems to be of exceptional importance.--While not permitting the supreme court to address per curiam affirmed decisions, this practice would authorize the supreme court to reach any district court of appeal opinion even though it was not certified or deemed to be in conflict with any other opinion. This would not be a solution to the complaint of those aggrieved by per curiam decisions. Moreover, this practice would likely result in a substantial increase in the number of petitions for review filed in the supreme court as almost any losing litigant views his case to be of exceptional importance. The present liberal practice of district courts of appeal in certifying their opinions permits the supreme court to reach almost every district court of appeal opinion which contains issues of statewide importance. Broadening the review authority of the supreme court would have the same impact on the court and the criminal justice system as explained in item 1.

3. Permitting the supreme court to have the discretionary right to review any decision of the district courts of appeal.--The United States Supreme Court follows this practice, though in recent years some experts have expressed the view that this has placed an impossible burden on that court. While permitting the supreme court to control its own docket by deciding which cases

it will take, this practice could be expected to result in a massive increase in the filing of petitions for review. The justices would have to spend an inordinate amount of effort in considering the petitions for discretionary review, thereby limiting the amount of time within which to actually decide cases and write opinions. Each litigant would be seeking a second appeal, which would thwart the objective of having the district courts of appeal relieve much of the supreme court caseload. There would be considerable pressure upon lawyers representing criminal defendants to file petitions for review in the supreme court in every case in order to avoid later accusations of ineffective counsel. The adoption of this practice raises the specter of excessive reliance upon non-judicial screening personnel or unacceptable delays in the final disposition of cases and has the same fiscal and delay impact on the criminal justice system as explained in item 1.

4. Permitting the supreme court to reach down and review any case from any court.--This would provide the supreme court with total flexibility. It would, however, remove the litigants' control over their own cases since, unlike the present practice or any of the other suggestions, the supreme court could undertake the consideration of a case regardless of a request by either party. Moreover, this practice would open the door to the possibility of ex parte communications because it would be to the litigants' advantage to apprise the supreme court of the existence of cases pending within the system.

5. Requiring district courts of appeal to write opinions in every case.--If this were done, each litigant would seek review in the supreme court under existing constitutional provisions by asserting conflict with another opinion. Yet, there are some cases in which an appellate opinion is neither necessary nor desirable. The primary obstacle to a requirement of writing an opinion in every case is the huge caseload of the district courts of appeal. In 1982, the five district courts of appeal disposed of 13,976 cases and issued 4,287 published opinions. The Florida district court of appeal caseload of 303 cases per judge is the third highest of the intermediate courts throughout the nation. Opinions could not possibly be written in every case without doubling the number of district court of appeal judges.

6. Permitting appellate courts to write unpublished memorandum opinions in certain cases.--This procedure, which is used in some other populous states, responds to the argument that each litigant is entitled to a reasoned appellate analysis on the merits of his case. Because of the nonprecedential value of unpublished opinions, this practice does not have the effect of increasing access to the supreme court. The propriety of citing as authority an unpublished opinion is subject to dispute in jurisdictions that use such opinions, and to the extent this is permitted, it prefers frequent litigants who have more access to

such opinions. The issuance of an unpublished opinion might simply serve to increase the frustration of the losing party because it could not be used as a vehicle for access to the supreme court. The issuance of unpublished opinions could also decrease the number of opinions of the district courts which are published unless the responsibility for writing unpublished opinions is delegated to staff. The utilization of the unpublished opinion process would require additional judicial manpower or staff.

An article supporting, in part, the use of unpublished opinions is Anstead, Selective Publication: An Alternative to The PCA?, 34 U. Fla. L. Rev. 189 (1982). The Appellate Rules Committee has unanimously rejected a proposal to permit the use of unpublished memorandum opinions.

The Commission recognizes that there are deep concerns among the legislature and the bar about our appellate structure and whether the 1980 reform has been too restrictive in its application. As Florida has added judges to the district courts of appeal to meet the exploding caseload in those courts, we have also increased the number of panels that make judicial decisions. This has resulted in a growing multiplicity of panels with, of course, a greater opportunity for them to reach inconsistent and conflicting decisions. In addition, as the caseload of each judge increases, there is less opportunity to write thorough, well-reasoned opinions. The Commission believes that some method other than a change in supreme court jurisdiction must be used to address the problems created by this continued growth. Administrative techniques should be utilized to address these problems. We suggest an in-depth inquiry into the use of a subject-matter organizational plan such as that proposed by Professor Daniel J. Meador in an article entitled An Appellate Court Dilemma and A Solution Through Subject Matter Organization, 16 U. Mich. J.L. Ref. 471 (1983), an expansion of the en banc process as contained in recommendation No. 11, and encouragement to the district courts of appeal to fully utilize the certified question authority to assure that the supreme court receives all issues of statewide importance for resolution.

10. RECOMMENDATION:

IT IS RECOMMENDED THAT ARTICLE V, SECTION 3(b)(5) BE AMENDED TO ALLOW ANY DISTRICT COURT TO "PASS THROUGH," BY CERTIFICATION TO THE SUPREME COURT, ANY "PROCEEDING" WHICH IS PENDING BEFORE THAT COURT. THIS AMENDMENT WOULD MODIFY THE PRESENT LANGUAGE WHICH PROVIDES FOR CERTIFICATION IN CASES "IN WHICH AN APPEAL IS PENDING" AND WOULD

ELIMINATE THE RESTRICTION THAT "PASS-THROUGH" MAY ONLY BE USED WHERE AN APPEAL IS PENDING IN A DISTRICT COURT.

The following constitutional amendment should be adopted to implement this recommendation:

(5) May review any ~~order or judgment of a trial court~~ pending proceeding in a district court of appeal certified by the district court ~~of appeal in which an appeal is pending~~ to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

Commentary: It is the belief of the Commission that the "pass-through" provision of article V, section 3(b)(5), should be expanded to allow proceedings which are original or pending certiorari review in the district court to be certified to the supreme court. Pursuant to article V, section 4(b)(2), the "[d]istrict courts of appeal shall have the power of direct review of administrative action, as prescribed by general law." Under section 4(b)(3), a district court "may issue writs of habeas corpus . . . [,] mandamus, certiorari, prohibition, quo warranto, and other writs necessary to complete the exercise of its jurisdiction." Amending section 3(b)(5), as recommended would allow the "pass through" of such cases to the supreme court. The Commission feels that restriction of pass-through authority to appeals is unnecessary and that this change will not substantially increase the number of cases that the district courts may certify under this provision.

11. RECOMMENDATION:

IT IS RECOGNIZED THAT NO CONSTITUTIONAL CHANGE IS NECESSARY FOR THE DISTRICT COURTS TO HOLD EN BANC PROCEEDINGS, AS THE PROCEDURE GOVERNING EN BANC PROCEEDINGS LIES WITHIN THE RULE-MAKING AUTHORITY OF THE SUPREME COURT. IT IS RECOMMENDED, HOWEVER, THAT FLORIDA RULE OF APPELLATE

PROCEDURE 9.331 BE AMENDED BY THE SUPREME COURT TO BROADEN THE EN BANC PROCEEDINGS TO ALLOW THE DISTRICT COURTS OF APPEAL TO ORDER HEARING OR REHEARING EN BANC TO RESOLVE QUESTIONS OF EXCEPTIONAL IMPORTANCE. THIS AUTHORITY WOULD BE IN ADDITION TO THE PRESENT AUTHORITY OF THE DISTRICT COURTS TO RESOLVE CONFLICT OF DECISIONS IN ORDER TO MAINTAIN UNIFORMITY WITHIN EACH DISTRICT AS PRESCRIBED IN RULE 9.331.

It is suggested that Florida Rule of Appellate Procedure 9.331 be amended to implement this recommendation.

Commentary: In 1978, the Appellate Structure Commission recommended the adoption of a new appellate rule authorizing the district courts of appeal to sit en banc to resolve intra-district conflicts of decisions or to consider cases of exceptional importance. The Florida Supreme Court adopted a modified version of the recommendation, which limited en banc proceedings to the resolution of intra-district conflict. See In re Rule 9.331, Determination of Causes by a District Court of Appeal En Banc, Florida Rules of Appellate Procedure, 374 So. 2d 992 (Fla. 1979). The Article V Review Commission believes that the en banc rule, Florida Rule of Appellate Procedure 9.331, should now be expanded to allow the district courts to sit en banc to hear matters of exceptional importance. The en banc rule, as proposed, has the purpose of providing litigants another avenue by which an appellate court may harmonize decisions and resolve questions of exceptional importance.

12. RECOMMENDATION:

TO PROVIDE DEFINITIVE OPINIONS IN AREAS OF THE LAW WHICH ORDINARILY DO NOT REACH THE DISTRICT COURTS OF APPEAL FOR DECISION, WE RECOMMEND LEGISLATION WHICH WOULD ALLOW THE DISTRICT COURTS OF APPEAL AN OPPORTUNITY TO REVIEW COUNTY COURT DECISIONS WHEN CERTIFIED TO THE DISTRICT COURT BY A COUNTY COURT JUDGE.

Subsection (1) of section 26.012, Florida Statutes (1982 Supp.), and section 924.08, Florida Statutes, as amended by chapter 83-216, Laws of Florida, should be amended as follows:

26.012 Jurisdiction of circuit court.--

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution and except orders or judgments of a county court which are certified by the county court to the district court of appeal to be of great public importance and which are accepted by the district court of appeal for review. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

924.08 Courts of appeal.--

(1) The district courts of appeal may review any order or judgment of a county court which is certified by the county court to be of great public importance.

(2) Appeals from final judgments in misdemeanor cases tried by county courts shall be to the circuit court.

In addition, a new section, section 34.192, which reads as follows, should be adopted:

34.192 Certification to district court of appeal.--

(1) County courts are permitted to certify questions to the district court of appeal in a final

judgment if the question may have statewide application, and is:

(a) of great public importance, or

(b) will affect the uniform administration of justice.

(2) Method of Certification.

In the final judgment, the trial court shall:

(a) make findings of fact and conclusions of law, and

(b) state concisely the question to be certified.

(3) The decision to certify the question to the district court of appeal shall be within the sole discretion of the county court.

(4) The district court of appeal shall have absolute discretion as to whether to answer a question certified by the county court.

(a) If the district court agrees to answer the certified question, it will decide all appealable issues that have been raised from the final judgment.

(b) If the district court declines to answer the certified question, the case will be transferred to the circuit court which has appellate jurisdiction.

This change would also require the supreme court to exercise its rule-making authority pursuant to article V, section 2(a), to require county courts to write opinions in cases to be certified to the district courts of appeal. No constitutional or statutory change is necessary for this final step since the court has the authority to require written opinions.

Commentary: The Commission recommends this statutory change in district court jurisdiction so that areas of the law not presently addressed by published appellate opinions may be so addressed, thereby providing a body of case law for those areas within the county court jurisdiction. The Commission feels that such a body of case law is necessary to provide adequate guidance to both the public and the judiciary and to foster more uniform decisions. Under the present system, county court opinions are not reported and, therefore, county court judges are not aware of other judges' rulings in any particular area of the law. One obvious area where a uniform body of case law will be most beneficial is in the landlord-tenant law. Lack of case law in this area has led to conflicting interpretations of statutory language among the various county courts in the different circuits.

The jurisdiction of the district courts of appeal would be discretionary, like the present supreme court discretionary jurisdiction under article V, section 3(b)(3). Questions could be certified by the county courts as being of great public importance or as affecting the uniform application of justice. The Commission prefers district court of appeal review of certified questions from county courts to circuit court review of such certified questions because of the limited precedential value of circuit court appellate opinions.

13. RECOMMENDATION:

THE COMMISSION DETERMINED THAT THERE IS NO NEED TO AMEND THE CONSTITUTION TO AUTHORIZE THE ESTABLISHMENT OF SPECIALIZED COURTS.

Commentary: No constitutional change is necessary with regard to specialized courts because the constitution, in article V, section 7, provides that "[a]ll courts except the supreme court may sit in divisions as may be established by general law."

14. RECOMMENDATION:

THE COMMISSION RECOMMENDS THAT THE CONSTITUTION BE AMENDED TO PROVIDE THAT THE JUDICIAL NOMINATING COMMISSIONS AT EACH LEVEL OF THE COURT SYSTEM OPERATE UNDER UNIFORM RULES AND THAT ALL PROCEEDINGS AND RECORDS OF THE JUDICIAL NOMINATING COMMISSIONS BE OPEN TO THE PUBLIC.

To implement these recommendations, article V, section 11(d), should be amended as follows:

~~(d)~~ (c) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure shall be established by the judicial nominating commissions at each level of the court system. Such rules, or any part thereof, may be repealed by general law enacted by a majority vote of the membership of each house of the legislature or by the supreme court, five justices concurring. The proceedings of the judicial nominating commissions and their records shall be open to the public.

Commentary: The present provision for judicial nominating commissions, article V, section 11(d), provides that there be separate nominating commissions for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. It does not provide for procedural

rules for the nominating commissions, and, because of the supreme court's decision in In re Advisory Opinion to the Governor, 276 So. 2d 25 (Fla. 1973), which held that each commission is a separate and independent body under the constitution, the commissions are permitted to have varying rules and procedures. These rules relate to such matters as the adoption of application forms, interviews with applicants, balloting to select nominees for submission to the governor, selection of commission chairmen, confidentiality of proceedings, and evaluation of nominees. Further, the present provision does not require that either the proceedings of the commissions or the commissions' records be open to the public.

There have been several proposed amendments which addressed the issues of uniform rules and openness of proceedings and records. The Constitutional Revision Commission of 1978 recommended the following proposal:

> ~~(d)~~ (c) There shall be a separate judicial nominating commission as provided by general law for the supreme court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Uniform rules of procedure for the judicial nominating commissions shall be prescribed by the supreme court. All proceedings and records of the judicial nominating commissions shall be open and accessible to the public. The supreme court may by rule exempt portions of the proceedings and records from this provision when it is essential to accomplish overriding governmental purposes or to protect privacy interests.

The Article V Review Commission believes that uniform rules are necessary. The Commission, however, recognizes that the different levels of the state court system have varying functions and needs. Therefore, the Commission recommends that each level operate under uniform rules promulgated to address the needs of that particular level of the court system. This would require separate uniform rules for nominating commissions for the supreme court, the district courts of appeal, and the circuit and county courts. The Commission further recommends that the process for adoption of rules employed by the Judicial Qualifications Commission be established for the nominating commissions. This could be accomplished at annual meetings of the commissions at each level of the court system. The rules established are subject to repeal by the concurrence of five justices of the supreme court or by general law passed by a majority of the

membership of each house of the legislature. Like the establishment of rules language, this repeal language is identical to that pertaining to the Judicial Qualifications Commission in article V, section 12.

The second aspect of the recommended provision concerns the confidentiality of nominating commission proceedings and records. In the 1983 legislative session, Senator Roberta Fox sponsored Senate Joint Resolution 519, which would open all nominating commission proceedings and records. Under this resolution, the legislature would have the power to exempt certain proceedings, records, or parts thereof, by general law passed by a three-fifths vote of the membership of each house. The Commission agrees that all proceedings of the nominating commissions and their records should be open to the public, including the deliberations of the commissions. The Commission also recommends that public access not be restricted by any exemptions to this requirement.

With regard to the issue of the openness of the records and proceedings of the judicial nominating commissions, exclusive of the deliberations and voting of the commissions, there was not a great deal of controversy among the members of the Commission. By a vote of 16 to 5, the Commission passed a motion proposing that all proceedings and records of the judicial nominating commissions be open to the public. Controversy arose, however, with regard to a motion to exempt from the open-proceedings requirement the deliberations and voting of the judicial nominating commissions. It was argued that the deliberations and voting of the nominating commissions be open to avoid the use of hearsay and rumors and to assure that the selection process be free of personal biases and be conducted fairly. On the other hand, it was asserted that deliberations and voting should be closed so that the nominating commission members would be able to receive information that might not otherwise be forthcoming. The closing of these portions of the nominating commission proceedings, it was argued, would also protect lawyer members from having to publicly discuss and vote on whether a sitting judge, before whom the lawyer member may have to practice, should be nominated for another judicial position. The motion to exempt deliberations and voting from the open-proceedings requirement failed by a vote of 8 in favor, 13 against. Four members of the Commission have served or presently serve on judicial nominating commissions, and these members split 2 to 2 on this exemption issue. At a later meeting, the Commission voted to reconsider the motion exempting deliberations and voting from the open-proceedings requirement. Upon reconsideration, the motion received 12 votes in favor and 11 votes against. An affirmative vote of 14 (a majority of the membership of the Commission) was required for a recommendation, however, and so the motion failed.

15. RECOMMENDATION:

IT IS RECOMMENDED THAT THE CONSTITUTION PROVIDE FOR AN ADVISORY JUDICIAL COMPENSATION COMMISSION.

Commentary: The Commission heard considerable testimony concerning the establishment, in the constitution, of a judicial compensation commission. The Commission believes that there should be an independent body with the authority to determine and recommend a level at which judicial salaries should be set. Such an independent body could then act as an advocate for its recommendations and the problem of judges having to lobby the legislature for salary increases could be avoided. The level of judicial compensation has a direct effect on the quality of the state judiciary and the compensation commission could aid in developing a suitable level for judicial salaries.

16. RECOMMENDATION:

THE COMMISSION RECOMMENDS THAT ALL OBSOLETE PROVISIONS IN THE SCHEDULE OF ARTICLE V, SECTION 20, BE ELIMINATED.

Commentary: To implement this recommendation, the Commission proposes that the constitutional amendment proposed by the 1978 Constitutional Revision Commission be adopted.

17. RECOMMENDATION:

IT IS RECOMMENDED THAT THERE BE NO CHANGE IN THE PROVISION REQUIRING RETIREMENT OF ACTIVE JUDGES AT AGE SEVENTY.

Commentary: In making this recommendation, the Commission wishes to emphasize that there is no age restriction affecting the eligibility of retired judges and encourages the legislature to provide sufficient funds for compensation and staff so that retired judges can be better utilized within the present judicial system. There is no constitutional restriction on using retired judges over the age of seventy who voluntarily agree to serve and there is a means to regularly review the capabilities of the retired judges in service by the chief justice and the chief judge of the circuit in which the retired judges serve. Health factors can limit the ability of judges to serve, and problems have arisen in jurisdictions which have no mandatory retirement

age. See McComb v. Commission on Judicial Performance, 564 P.2d 1, 138 Cal. Rptr. 459 (1977).

18. RECOMMENDATION:

IT IS RECOMMENDED THAT THERE BE NO CHANGE IN THE PROVISIONS OF ARTICLE V, SECTION 12, RELATING TO THE JUDICIAL QUALIFICATIONS COMMISSION.

Commentary: In making this recommendation, it is noted that all information in the possession of the commission concerning either applicants for judicial office or retired judges requesting temporary assignment, upon the applicants' executing waivers of confidentiality contained in applications for judicial office, may be released to the appropriate nominating commission, the governor, and the chief justice of the supreme court.

19. RECOMMENDATION:

THE COMMISSION RECOMMENDS THAT THERE BE NO CHANGE CONCERNING SUPREME COURT SUPERVISION OF BAR DISCIPLINE AND ADMISSIONS.

Commentary: Under the supervision of the supreme court, Florida has developed one of the finest disciplinary and admissions systems in the nation. The Florida Bar now employs sixteen full-time lawyers and two auditors on its regulatory staff. There are substantial volunteer contributions by lawyers and lay members of grievance committees. The present system is operated at no cost to taxpayers except for funding the judicial review portion of the process which would be necessary in any other process. Florida is recognized as having one of the most progressive bar disciplinary and admissions processes in the country and was one of the first states to include non-lawyers in its attorney discipline and admissions processes.

20. RECOMMENDATION:

THE COMMISSION RECOMMENDS THAT THERE BE NO CHANGE IN THE CONSTITUTION CONCERNING THE OFFICE OF THE CLERK OF THE CIRCUIT COURT.

Commentary: Although there may be problems with the clerk system in some counties, article V, section 16, provides a mechanism where, by general or special law, the office of the clerk of the

circuit court may be divided between two officers, one serving as the clerk of the court and one serving as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. No constitutional change appears necessary.

21. RECOMMENDATION:

IT IS RECOMMENDED THAT THERE BE NO CONSTITUTIONAL CHANGE BY WHICH WORKERS' COMPENSATION ISSUES OR DEPUTY COMMISSIONERS WOULD BE INTEGRATED INTO THE JUDICIAL ARTICLE.

Commentary: It is important to recognize that this issue does not require a constitutional change since the legislature, if it so desires, could transfer the jurisdiction of workers' compensation claims to either the county or circuit courts by statute.

22. RECOMMENDATION:

IT IS RECOMMENDED THAT THE RIGHT TO COUNSEL IN CIVIL PROCEEDINGS BE ADDRESSED BY A MORE APPROPRIATE BODY.

Commentary: The issue of counsel as a matter of right received considerable discussion by this Commission. While the Commission is very concerned about the issue, the consensus is that recommendations in this area would necessarily go beyond the scope of the Commission's responsibility. Other institutions of the state government and private sector should give additional study and consideration to this important issue.

Additionally, the Commission observed that there are existing programs that have not been fully developed or utilized to assist right to counsel in certain civil proceedings. Interest on trust accounts is such a program that holds great potential to provide resources and The Florida Bar is encouraged to develop a program to involve greater participation on the part of lawyers and law firms in such program.

23. RECOMMENDATION:

IT IS RECOMMENDED THAT SECTION 43.29(2), FLORIDA STATUTES (1981), BE AMENDED TO PROVIDE THAT PERSONS WHO SERVE ON JUDICIAL NOMINATING COMMISSIONS BE ELIGIBLE FOR STATE JUDICIAL OFFICE WHEN SUCH OFFICE IS FILLED BY A NOMINATING COMMISSION OTHER THAN THE ONE ON WHICH SUCH PERSONS SERVE.

To implement this recommendation, section 43.29(2), Florida Statutes (1981), should be amended as follows:

(2) No justice or judge shall be a member of a judicial nominating commission. A member of a judicial nominating commission may hold public office other than judicial office. ~~No member shall be eligible for appointment to state judicial office so long as he is a member of a judicial nominating commission and for a period of two years thereafter.~~ A member of a judicial nominating commission shall not be eligible for appointment to the state judicial office for which that commission has the authority to make nominations, either during such term of membership or for a period of two years thereafter. All acts of a judicial nominating commission shall be made with a concurrence of a majority of its members.

Commentary: Section 43.29(2), as presently written, adopts the schedule provision contained in article V, section 20(c)(6). It provides that no person who serves on a judicial nominating commission "shall be eligible for appointment to state judicial office so long as he [or she] is a member of a judicial nominating commission and for a period of two years thereafter." The Commission believes that under the present provision, persons who are qualified and eligible to serve on judicial nominating commissions may decline service on a nominating commission because they may have aspirations to become a judge in a position filled by a different nominating commission. In addition, persons who are qualified and eligible for judicial office filled by a nominating commission other than the one on which the individuals serve are not at present able to be considered for state judicial office because of their present or prior service on a nominating commission. The recommended amendment allows a person serving on a judicial nominating commission, or within two years following such service, to be considered for appointment to a judgeship by another nominating commission.

24. RECOMMENDATION:

IT IS RECOMMENDED THAT NO CHANGE BE MADE WITH REGARD TO THE SUPREME COURT'S RULE-MAKING POWER UNDER ARTICLE V, SECTION 2(a).

Commentary: The Commission finds that there is no need for a change in section 2(a). Prior to the adoption of section 2(a) in 1972, the supreme court had total rule-making authority. As presently written, section 2(a) provides for legislative involvement in the rule-making process by allowing for legislative repeal of a court rule. Court rules are procedural and set the means and methods for bringing issues to a court for resolution. In many instances, court rules merely implement constitutional requirements. In State v. Golden, 350 So. 2d 344 (Fla. 1977), the supreme court held that certain of its rules were unconstitutional because they concerned substantive matters which were the subject of a statute. Further, the supreme court has incorporated as a rule certain statutes which dealt with procedural matters because such statutes expressed legislative policy. See In re Florida Evidence Code, 372 So. 2d 1369 (Fla. 1979); In re Clarification of Florida Rules of Practice and Procedure, 281 So. 2d 204 (Fla. 1973). Under the present constitutional scheme, the supreme court and the legislature have worked cooperatively, in a manner beneficial to the public.

MINORITY REPORTS

Minority Reports to Recommendation 1:

A minority of the Commission felt that limiting circuit judge eligibility to those persons who have been members of the bar of Florida for the preceding ten years would greatly reduce the number of qualified applicants for such positions. Since persons who have been successful in private law practice for ten years often will have chosen a career path difficult to leave, both in terms of specialties and expertise developed and in view of the disparity between the projected income of a successful ten-year private practitioner and the present income of circuit judges, it was felt that the ten-year requirement for circuit judge eligibility would have the unintended result of restricting instead of augmenting the already small field of qualified applicants for such position.

Since county court judges substitute and serve for circuit court judges in most areas, a minority felt that requiring membership in the bar of Florida for the preceding five years is an appropriate requirement for both circuit and county court judges.

Submitted by

Patricia C. Fawsett
Talbot D'Alemberte

We agree with the above and would add the following:

Additionally, consideration of the impact of this change on female and minority access to the bench was proposed as reason to maintain the present situation.

Submitted by

Eleanor M. Hunter
Jeffrey H. Barker
Andrew L. Gordon

Minority Reports to Recommendation 2:

In behalf of the very substantial majority of our fellow judges who take vigorous issue with the recommendation of the Commission to abolish the right of the citizenry to choose between known candidates for a trial judgeship in favor of the so-called "Merit Retention of Trial Judges," we hereby denote our disagreement with that recommendation.

Submitted by

Theron A. Yawn, Jr.
Elmer O. Friday
James C. Smith
James A. Scott
Gwen Margolis
Hamilton D. Upchurch

While favoring merit retention in concept, it cannot work effectively without a meaningful judicial evaluation procedure to enable the public to make an informed and intelligent vote in merit retention elections. At the present time, without such process, merit selection is tantamount to a lifetime appointment absent a strong press campaign. Merit retention should be preceded by either an effective judicial evaluation procedure or effective means of removal.

Submitted by

Gerald F. Richman

Minority Report to Recommendations 2 and 3:

A minority of the Commission felt that the Commission's recommendation that merit retention of judges be extended to all levels of the judiciary (Section 10) combined with the Commission's recommendation that all vacancies for trial court judgeships should be filled by Judicial Nominating Commissions (Section 11) will have the practical effect of removing from the electoral process the selection of the judiciary. In this regard a minority felt that the election of judges should be viewed as an important safety valve for the public to whom the judiciary should remain ultimately accountable and, therefore, the opportunity for the public to elect judges should be maintained.

Submitted by

Patricia C. Fawsett

Minority Reports to Recommendation 14:

A minority of the Commission felt that all proceedings of the Judicial Nominating Commissions except the actual deliberations and the voting on candidates should be open to the public. The judicial branch of government has a tradition of reflective, private deliberations in chambers in order to reach a just result. Examples are the private deliberations of judges, juries and appellate panels as well as certain proceedings of the Judicial Qualifications Commission.

While the application, interview and information obtaining processes of the JNC can be made uniform statewide as well as open to the public without harm, requiring the deliberative process on such candidates to be open to the public will be a deterrent to thoughtful, honest and frank discussions. It will also cause experienced litigation attorneys who have made valuable contributions to the JNC process in the past to decline to serve. A minority feels that the confidentiality surrounding the deliberations of the Judicial Nominating Commissions has been a major reason for the success of the nominating process and the selection of superior candidates for judicial positions.

Submitted by

Patricia C. Fawsett

The search for the truth is the media's most urgently expressed reason for protecting its sources. We cannot understand why that same reason should not apply to the final deliberations of JNCs and we believe it does. Inevitably these deliberations will now be less frank and less complete. That lack of frankness and completeness is inconsistent with this Commission's strong stand for "merit" selection.

Submitted by

Gavin Letts
Gerald F. Richman
Andrew L. Gordon
John K. Aurell
Patricia C. Fawsett

Minority Report to Recommendation 21:

The undersigned submit this statement of support for a constitutionally mandated place within our court system for litigants who suffer loss in their work-place, and disappointment in the failure of the Commission to so recommend.

Submitted by

Elmer O. Friday
Robert M. Stiff
Eleanor M. Hunter

INDEX TO APPENDIX

IN THE SUPREME COURT OF FLORIDA

MONDAY, MAY 9, 1983

IN RE

SUPREME COURT'S ARTICLE V REVIEW COMMISSION

ADMINISTRATIVE ORDER

On March 14, 1972, the people of Florida adopted a substantial amendment to article V of our state constitution which restructured Florida's court system. By this amendment, the fourteen varying types of trial courts then existing were consolidated into a uniform two-tier trial system of circuit and county courts. Among other things, this amendment also made all judges subject to the disciplinary procedures of the Judicial Qualifications Commission, required that all judges serve full time, required the governor to fill judicial vacancies under a merit selection process by the use of judicial nominating commissions, and provided an expedited process to certify the need for new judgeships. This amendment, which became effective January 1, 1973, gave Florida one of the most modern and efficient court systems in the nation.

Several other amendments have been made to article V since this major revision in 1972. Section 12 was amended in both 1974 and 1976, insofar as it relates to the powers and duties of the Judicial Qualifications Commission and the nature of its proceedings. In 1976, sections 3, 10, and 11 were also amended to provide that each appellate district of the state have at least one Supreme Court Justice who was a resident of the district at the time of his or her appointment, to provide for merit retention of appellate justices and judges, and to provide that the governor fill vacancies on the Supreme Court or district courts of appeal by appointing persons nominated by the appropriate judicial nominating commission. Finally, in 1980, section 3(b) was amended to modify the jurisdiction of the Supreme Court.

We now have had more than ten years' experience since the 1972 amendment to article V became effective. During those years we have established a judicial "track record" by which we may judge the workability and general success of our restructured court system. In light of this experience, a review and evaluation of our present article V are appropriate and timely. Although I believe that we have one of the best court systems in the nation, we, nevertheless, should be open to new ideas and ways of improving our judicial article. Members of the Commission must always keep in mind that they are reviewing and evaluating a part of our state constitution which should not be amended precipitously or without very careful study.

Commission membership

[See Introduction to Report for list of members.]

Commission functions

The Commission is directed to make a comprehensive review and evaluation of all sections of article V of the Florida Constitution. The Commission shall convene at the call of the chairman. It should complete its review and evaluation and submit its report to me no later than February 1, 1984, with copies to the Honorable Bob Graham, Governor, State of Florida; the Honorable N. Curtis Peterson, Jr., President of the Florida Senate; and the Honorable H. Lee Moffitt, Speaker of the Florida House of Representatives.

Staff support for the Commission will be provided by the office of the State Courts Administrator.

It is so ordered.

/s/ James E. Alderman
Chief Justice

ATTEST:

/s/ Sid J. White
Clerk

CHART I:

FILINGS AND DISPOSITIONS IN THE FLORIDA SUPREME COURT

YEAR	FILINGS	DISPOSITIONS
1972	1,288	1,229
1973	1,600	1,615
1978	2,740	2,499
1982	1,465	1,439
1983	1,686	1,517

CHART II:

FILINGS AND DISPOSITIONS IN THE FLORIDA DISTRICT COURTS OF APPEAL

YEAR	NUMBER OF JUDGES	FILINGS	FILINGS PER THREE-JUDGE PANEL*	DISPOSITIONS	DISPOSITIONS PER THREE-JUDGE PANEL*
1973	20	5,300**	957.9 (319.3)	5,171**	926.1 (308.7)
1978	28	9,563	1,024.5 (341.5)	9,692	1,038.3 (346.1)
1982	45.25	13,924	923.1 (307.7)	13,976	926.7 (308.9)
1983	46	13,855	903.6 (301.2)	14,192	925.6 (308.5)

*Number in parentheses indicates the equivalent filings and dispositions per judge for each judge on the three-judge panels.

**In 1973 the district courts of appeal also disposed of 1002 of 1085 petitions for rehearing.

CHART III:

FILINGS AND DISPOSITIONS IN THE FLORIDA CIRCUIT COURTS

YEAR	NUMBER OF JUDGES	FILINGS	DISPOSITIONS
1973	262	252,712	222,398
1978	291	488,256	439,744
1982	328	548,027	520,278
1983*	339	554,191	542,817

*1983 figures were estimated by the State Courts Administrator's Office based on actual figures for the first nine months of 1983.

CHART IV:

FILINGS AND DISPOSITIONS IN THE FLORIDA COUNTY COURTS

YEAR	NUMBER OF JUDGES	FILINGS	DISPOSITIONS
1973	155	273,719	224,917
1978	191	2,582,858	2,355,745
1982	199	3,205,509	2,923,072
1983*	205	3,499,634	3,342,686

*1983 figures were estimated by the State Courts Administrator's Office based on actual figures for the first nine months of 1983.

CHART I: COMPARATIVE APPELLATE STRUCTURE STATISTICS

Chart I is a statistical analysis of cases filed in the Supreme Court of Florida for the year 1979, the last full year under the prior constitutional provision, compared with the year 1981, the first full year under the new constitutional provision. It was prepared by a staff assistant's examining the records of all cases filed in 1979 and in 1981 and following those cases to their respective conclusions.

This chart establishes that the Supreme Court of Florida decided more cases on the merits on the basis of conflict under the new constitutional amendment than it did under the prior constitutional provision. The total number of cases decided by the Supreme Court in 1979 on pure conflict, without regard to certified questions, was 50, compared to 83 cases decided in 1981, the first full year under the new constitutional provision. The Supreme Court also considered more certified questions under the new amendment than it did under the old provision. In 1981 the Court accepted 76 cases, compared to 23 in 1979.

CHART I - APPELLATE STRUCTURE STATISTICS: SELECTED SUPREME COURT OPINIONS

ANALYSIS OF SELECTED CATEGORIES OF CASES FILED IN 1979 and 1981:[1]

	TOTAL PETITIONS FILED		CASES ACCEPTED AND DISPOSED OF ON THE MERITS		TOTAL PETITIONS AND DISPOSITIONS	
	1979	1981	1979	1981	1979	1981
CERTIORARI (Changed to "Discretionary Review" in 1980)					1676/116	673/172
DISTRICT COURTS OF APPEAL	1280	673	74 (total)	172 (total)		
Constitutional Construction			NA	2		
Class of Constitutional Officers			1	1		
Conflict			50	83 (3)[2]		
Certified Question			23	76 (2)		
Certified Conflict			NA	7		
Certified Judgment of Trial Courts			NA	3		
CIRCUIT COURT	22	NA	9 (total)	NA		
Statutory Invalidity			8	NA		
Constitutional Construction			1	NA		
COUNTY COURTS	10	NA				
Statutory Invalidity			8	NA		
PUBLIC SERVICE COMMISSION	22	NA	9	NA		
INDUSTRIAL RELATIONS COMMISSION	342	NA	16	NA		
APPEALS (Changed to "Mandatory Review" in 1980)	37 (total)	67 (total)	37 (total)	67 (total)	37/37	67/67
DEATH PENALTY	31	41	31	41		
BOND VALIDITY	6	9	6	9		
STATUTORY/CONSTITUTIONAL INVALIDITY	NA	6	NA	6		
PUBLIC SERVICE COMMISSION	NA	11	NA	11		

FOOTNOTES TO CHART I

1. Does not include other appeals, original writs, or Florida Bar matters.

2. Indicates pending cases as of October 1, 1983.

CHART II: COMPARATIVE APPELLATE STRUCTURE STATISTICS

Chart II is a comparison of the highest appellate courts of the ten most populous states. This chart was prepared from information received in response to a questionnaire sent to the chief justices of the ten most populous states and from information obtained from West Publishing Company. It also contains a comparison with the caseload of the United States Supreme Court.

This chart reflects that the Supreme Court of Florida ranks in the middle of the ten most populous states in total caseload based on 1983 total case filings for Florida, and third or fourth in the number of opinions produced, depending on whether you use the statistical information obtained from West Publishing Company or from the questionnaire information. The figure of 342 opinions was obtained by an actual examination of all Florida Supreme Court opinions issued in 1982. It should be noted that California, with over twice the caseload, produces less than half as many opinions for publication as the Supreme Court of Florida.

CHART II - APPELLATE STRUCTURE STATISTICS: HIGHEST APPELLATE COURTS OF THE TOP TEN STATES[1] (1982)

STATE (population)	NUMBER OF JUDGES	MANDATORY JURISDICTION CASELOAD	DISCRETIONARY JURISDICTION CASELOAD	TOTAL CASELOAD	DISCRETIONARY JURISDICTION CASELOAD	PUBLISHED OPINIONS[2] WEST PUBLISHING	PUBLISHED OPINIONS[2] SURVEY
CALIFORNIA (23.7 mill.)	7	43 (fiscal year 81-82)	3,338 plus 675 misc.	4,056	majority vote	132	123
NEW YORK[3] (17.6 mill.)	7	342	2,953	3,296	petition is assigned to one judge who may grant or deny[4]	466[5]	203[6]
TEXAS (Supreme Court)	9	3	930	933	concurrence of two justices	138	152
(Court of Criminal Appeals) (14.2 mill.)	9	156	1,054 plus 1,745 H.C.	2,955	concurrence of two justices	372	383
PENNSYLVANIA (11.9 mill.)	7	106	1,246 plus 234 misc.	1,586	concurrence of two justices	341	367[7]
ILLINOIS (11.4 mill.)	7	156	1,462 plus 131 misc.	1,768	majority vote	224	199
OHIO (10.8 mill.)	7	128	1,580 plus 178 misc.	1,886	majority vote	234	248
FLORIDA (9.7 mill.)	7	128	799 plus 538 misc.	1,686- (1983) 1,465 - (1982)	majority vote	346	342 (402)
MICHIGAN (9.3 mill.)	7	5	2,116	2,121	majority vote	234	134
NEW JERSEY (7.4 mill.)	7	445 (Sept. 82-Aug. 83)	1,088 plus 33 misc.	1,566	concurrence of three justices	126	119
NORTH CAROLINA (5.9 mill.)	7	total filings - mandatory and discretionary 692 plus and 546 misc.		1,238	procedure is internal to court	187	151
U.S. SUPREME COURT	9			5,311	rule of four		151

FOOTNOTES TO CHART II

1. State ranking is based on 1980 census figures.

2. The first column under "Published Opinions" indicates the number of opinions published as reported by West Publishing Company. The second column reflects the number of published opinions as reported on the returned questionnaires or as determined by staff records.

3. New York figures indicate court caseload for 1980.

4. The New York intermediate appellate court also has the authority to require the Court of Appeals to consider a case on the merits. If one judge in the intermediate court dissents, the Court of Appeals must take the case. In practice, however, these cases are usually disposed of summarily by the Court of Appeals.

5. The number of opinions published as reported by West Publishing Company is from 1982.

6. The New York Court of Appeals also produced 208 memorandum opinions.

7. Of the 367 published opinions, 171 were signed.

CHART III: COMPARATIVE APPELLATE STRUCTURE STATISTICS

Chart III is a comparison of the intermediate appellate courts of the ten most populous states. It was prepared from information received in response to a questionnaire sent to the chief justices of the ten most populous states and from information obtained from West Publishing Company.

This chart reflects that Florida is second only to California in the number of cases filed in the district courts of appeal and is only 775 cases behind that state. It is the third highest in the number of cases assigned per judge. While Florida assigns 303 cases to each judge for which that judge has primary responsibility, most jurisdictions, as reflected by the chart, have a caseload per judge of less than 200.

CHART III - APPELLATE COURT STATISTICS: INTERMEDIATE APPELLATE COURTS OF THE TOP TEN STATES[1] (1982)

STATE (population)	NUMBER OF JUDGES	NUMBER OF JUDGES ON PANEL	NUMBER OF CASES FILED	CASELOAD PER JUDGE	ADMINISTRATIVE DIVISIONS	MEMORANDUM OPINIONS	PUBLISHED OPINIONS	EN BANC	SELECTIVE PUBLICATION
CALIFORNIA (23.7 mill.)	77	3	14,699	191	Yes	Yes	1,146	No	Yes
NEW YORK[2] (17.6 mill.)	48	3	8,630	179	No	Yes	4,172[3] 493 full opinions 78 per curiam 4,452 memorandum	No	Yes
TEXAS (14.2 mill.)	79	3	7,440	94	No	Yes	1,681	Yes	Yes
PENNSYLVANIA	30 (total)		9,207 (total)				2,017 (total)		
(Superior Court)	20	3	5,593	279	No	Yes	1,144	Yes	Yes
(Commonwealth Court) (11.4 mill.)	10	3	3,614	361	No	Yes	873	Yes	Yes
ILLINOIS (11.4 mill.)	43	3	6,687	156	Yes	"short" opinions may be used	1,365	No	Yes
OHIO (10.8 mill.)	53	3	8,963	169	No	yes, when case is accelerated	268	No	Yes
FLORIDA (9.7 mill.)	46	3	13,924	303	No	No	4,287	Yes	No
MICHIGAN (9.3 mill.)	18	3	6,911	384	No	Yes	826	Yes (not used)	Yes
NEW JERSEY (7.4 mill.)	21	3	6,273	299	No	"short" opinions may be used	347	No	Yes
NORTH CAROLINA (5.9 mill.)	12	3	1,119	93	No	No	669	No	Yes

FOOTNOTES TO CHART III

1. State ranking is based on 1980 census figures.

2. New York figures reflect court caseload for 1980.

3. The top number, 4,172, is the number of opinions received by West Publishing Company for publication in 1982. This figure contains some trial court opinions. The other numbers reflect the court's opinions for 1980.

ALTERNATIVE RECOMMENDATION 1:

THE COMMISSION RECOMMENDS THAT ARTICLE V, SECTION 8, BE MADE GENDER NEUTRAL AND THAT THE WORDS "SERVE AS" REPLACE THE PHRASE "BE [OR IS] ELIGIBLE FOR OFFICE OF."

The following amendment is proposed to implement this recommendation:

SECTION 8. Eligibility.--No person shall ~~be eligible for office of~~ serve as justice or judge of any court unless ~~he~~ that person is an elector of the state and resides in the territorial jurisdiction of ~~his~~ the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which ~~he~~ has been served. No person ~~is eligible for the office of~~ shall serve as justice of the supreme court, ~~or~~ judge of a district court of appeal, or judge of the circuit court unless ~~he~~ that person is, and has been for the preceding ten years, a member of the bar of Florida. No person ~~is eligible for the office of~~ shall serve as ~~circuit~~ county court judge unless ~~he~~ that person is, and has been for the preceding five years, a member of the bar of Florida. ~~Unless otherwise provided by general law, a county court judge must be a member of the bar of Florida.~~

Schedule to Article V, Section 8.-- Any circuit court or county court judge who is in office at the date of the adoption of this constitutional provision shall be eligible to qualify and continue to serve in his or her current office as a circuit court or a county court judge.

VOTES OF THE COMMISSION

Vote on Recommendation 1:

Motion to amend the constitution to increase the eligibility requirement for trial court judges to provide that county court judges be members of the Florida Bar for five years, and that circuit court judges be members of the Florida Bar for ten years. A motion to approve the proposal with regard to county court judges passed 25 to 0. A motion that the constitution provide that county judges who are not lawyers or who are not qualified under the five-year bar membership requirement be limited to serving out their current term was rejected 7 to 18. (Note: The effect of this action is to approve a grandfather provision.) A motion to approve the proposal with regard to circuit court judges passed 18 to 7.

Votes of Commission members:

Proposal regarding county court judge eligibility:

Yea			Nay
Alderman	Clark	Fawsett	none
Criser	Letts	Karl	
Aurell	Scott	Julin	
Gordon	Margolis	Stiff	
Richman	Overton	Yawn	
Grimes	J. Smith	Friday	
Barker	Hunter	Upchurch	
Hubbard	D'Alemberte	Frost	
Richmond			

Proposal regarding non-qualified county court judges:

Yea	Nay	
Aurell	Alderman	J. Smith
Grimes	Criser	D'Alemberte
Barker	Gordon	Scott
Richmond	Richman	Julin
Karl	Hubbard	Stiff
Hunter	Clark	Yawn
Fawsett	Letts	Friday
	Margolis	Upchurch
	Overton	Frost

Proposal regarding circuit court judge eligibility:

Yea			Nay
Alderman	Letts	Julin	Gordon
Criser	Karl	Stiff	Richman
Aurell	Margolis	Yawn	Hubbard
Grimes	Overton	Friday	Richmond
Barker	J. Smith	Upchurch	Hunter
Clark	Scott	Frost	D'Alemberte
			Fawsett

Vote on Recommendation 2:

Motion to amend the constitution to implement the merit retention process for all trial court judges. A motion to approve this proposal passed 15 to 10. A second motion that the Commission study and recommend the use of some type of evaluation process in the context of a merit retention system passed 23 to 0. A motion to provide that merit retention could be by local option in each judicial circuit failed 12 to 10 (failed to get 14 vote majority). A motion to reconsider this local option proposal was rejected 11 to 14. By a show of hands, the Commission voted to reconsider the issue of merit retention. On reconsideration, the Commission again voted to recommend that merit retention be extended to trial court judges by a vote of 14 to 9.

Votes of Commission members:

Vote regarding merit retention of trial court judges:

Yea		Nay	
Alderman	Overton	Gordon	Fawsett
Criser	J. Smith	Richman	Yawn
Aurell	Hunter	Richmond	Friday
Grimes	D'Alemberte	Scott	Upchurch
Barker	Karl	Margolis	Frost
Hubbard	Julin		
Clark	Stiff		
Letts			

Vote regarding merit retention by local option:

Yea		Nay	
Criser	Overton	Alderman	Letts
Gordon	D'Alemberte	Aurell	Hunter
Richman	Fawsett	Grimes	Yawn
Hubbard	Julin	Barker	Upchurch
Karl	Stiff	Clark	Frost
Margolis	Friday		

Vote to reconsider proposal on merit retention by local option:

Yea		Nay	
Criser	D'Alemberte	Alderman	Margolis
Gordon	Fawsett	Aurell	J. Smith
Barker	Scott	Richman	Reno
Hubbard	Stiff	Grimes	Hunter
Karl	Friday	Richmond	Julin
Overton		Clark	Yawn
		Letts	Frost

Following vote to reconsider merit retention:

Yea		Nay	
Alderman	Letts	Richman	Yawn
Aurell	Karl	Margolis	Friday
Gordon	Overton	J. Smith	Upchurch
W. Smith	Hunter	Fawsett	Frost
Grimes	D'Alemberte	Scott	
Barker	Julin		
Richmond	Stiff		

Motion to amend the constitution to increase the term of county judges from four to six years. A motion to approve this proposal initially failed by a vote of 13 to 12 (14 votes were needed to constitute a majority). After the Commission voted to approve merit retention for trial court judges, this proposal was reconsidered. A motion was made that the Commission recommend that county court judges serve six-year terms upon the condition that a merit retention system for trial judges be finally approved. This motion passed 19 to 5.

Votes of Commission members:

On initial motion:

Yea		Nay	
Alderman	D'Alemberte	Criser	Scott
Aurell	Fawsett	Gordon	Margolis
Grimes	Karl	Richman	Hunter
Barker	Julin	Hubbard	Stiff
Letts	Yawn	Richmond	Upchurch
Overton	Friday	Clark	Frost
J. Smith			

Motion to reconsider:

Yea		Nay
Alderman	Overton	Richman
Criser	Reno	Hubbard
Aurell	D'Alemberte	Richmond
Grimes	Fawsett	Margolis
Barker	Julin	Hunter
Clark	Yawn	Scott
Letts	Friday	Stiff
Karl	Frost	

Following motion to reconsider:

Yea		Nay
Alderman	Overton	Richmond
Criser	Reno	Letts
Aurell	D'Alemberte	Margolis
Gordon	Fawsett	Hunter
Richman	Julin	Scott
Grimes	Stiff	
Barker	Yawn	
Hubbard	Friday	
Clark	Frost	
Karl		

Vote on Recommendation 3:

Motion to amend the constitution to require that all vacancies for trial court positions be filled through the merit selection process. A motion to approve this proposal passed 21 to 0. The Commission also voted 21 to 0 (on a show of hands) to recommend that the governor be allowed to start the merit selection process to fill vacancies created by resignation as soon as the resignation has been accepted. This recommendation would apply to vacancies in all courts.

Vote regarding merit selection to fill trial court vacancies:

Yea			Nay
Alderman	Hubbard	Karl	none
Criser	Clark	Julin	
Aurell	Letts	Stiff	
Gordon	Overton	Yawn	
Richman	Hunter	Friday	
Grimes	D'Alemberte	Upchurch	
Barker	Fawsett	Frost	

Vote regarding allowing the governor to begin the merit selection process on acceptance of a resignation:

Unanimous by show of hands.

Motion to amend the constitution to require the judicial nominating commissions to nominate and transmit to the governor the names of "not fewer than three persons nor more than six persons." A motion that this proposal be approved passed 18 to 3.

Votes of Commission members:

Yea			Nay
Alderman	Karl	D'Alemberte	Richmond
Criser	Margolis	Fawsett	Scott
Gordon	Overton	Julin	Frost
Grimes	J. Smith	Stiff	
Barker	Reno	Yawn	
Hubbard	Hunter	Friday	

Vote on Recommendation 4:

Motion to amend the constitution to permit the use of court-based alternative means for dispute resolution. A motion that the feasibility and desirability of using alternative, court-based methods to resolve disputes passed 23 to 0.

Votes of Commission members:

Yea		Nay
Alderman	J. Smith	none
Criser	Hunter	
Gordon	D'Alemberte	
Richman	Fawsett	
Grimes	Scott	
Barker	Julin	
Hubbard	Stiff	
Clark	Yawn	
Letts	Friday	
Karl	Upchurch	
Margolis	Frost	
Overton		

Yea		Nay
Alderman	Overton	Barker
Criser	J. Smith	Clark
Aurell	Hunter	D'Alemberte
Gordon	Fawsett	Friday
Richman	Karl	
Grimes	Julin	
Hubbard	Stiff	
Richmond	Yawn	
Letts	Upchurch	
Scott	Frost	
Margolis		

Vote on Recommendation 8:

Motion to amend the constitution to remove the appellate-district residency requirements for supreme court justices. A motion to approve this proposal passed 21 to 4.

Votes of Commission members:

Yea		Nay
Alderman	Overton	Criser
Aurell	J. Smith	Scott
Gordon	Reno	Upchurch
Richman	Hunter	Frost
Grimes	D'Alemberte	
Barker	Fawsett	
Hubbard	Julin	
Richmond	Stiff	
Clark	Yawn	
Karl	Friday	
Margolis		

Vote on Recommendation 9:

Motion to amend the constitution to allow the supreme court to modify its jurisdiction by rule of court approved by at least five justices, provided that these rules would not become effective unless approved by an extraordinary majority (two-thirds) of the membership of each house of the legislature. A motion to approve this proposal passed by a vote of 20 to 4, with the understanding that article V, section 3(b), would remain in place and that jurisdictional modifications by supreme court rule and legislative approval would be an alternative

Vote on Recommendation 5:

Motion to urge the legislature to relieve local governments of responsibility for the courts' operational expenditures. This motion passed unanimously, 23 to 0.

Votes of Commission members:

Unanimous by voice vote.

Vote on Recommendation 6:

Motion to amend the constitution to allow municipalities with a population of more than 50,000 people to create municipal courts. A motion to reject this proposal passed 22 to 2.

Votes of Commission members:

Yea		Nay
Alderman	Overton	Hubbard
Criser	J. Smith	Scott
Aurell	Hunter	
Gordon	D'Alemberte	
Richman	Fawsett	
Grimes	Julin	
Barker	Stiff	
Clark	Yawn	
Letts	Friday	
Karl	Upchurch	
Margolis	Frost	

Vote on Recommendation 7:

Motion to reject a proposal to amend the constitution to consolidate county and circuit courts into a single-tier system. The motion to reject passed 21 to 4.

Votes of Commission members:

to the regular constitutional-amendment processes. This motion was amended at a later meeting to provide that approval by the legislature would only require a majority vote of the membership of each house of the legislature rather than an extraordinary vote of the membership. The amendment to the original motion passed 15 to 0 on a show of hands.

Votes of Commission members:

Yea		Nay
Alderman	Letts	Richmond
Criser	Overton	Margolis
Aurell	Reno	Scott
Gordon	Hunter	Upchurch
Richman	D'Alemberte	
Grimes	Fawsett	
Barker	Julin	
Hubbard	Stiff	
Clark	Yawn	
Letts	Friday	

Motion to amend article V, section 3(b)(3), to allow the supreme to review per-curiam-affirmed decisions of the district courts. A motion that this proposal be approved was rejected by a vote of 2 yes, 21 no.

Votes of Commission members:

Yea		Nay	
Richman		Alderman	Overton
Barker		Criser	J. Smith
		Aurell	Reno
		Gordon	Hunter
		Grimes	Fawsett
		Hubbard	Scott
		Richmond	Julin
		Clark	Stiff
		Letts	Yawn
		Karl	Friday
		Margolis	

Motion to amend the constitution to expand the discretionary jurisdiction of the supreme court by allowing the court to review "any express decision of a district court of appeal which involves a question of exceptional importance." A motion to approve this proposal was rejected by a vote of 11 yes, 15 no.

Votes of Commission members:

Yea		Nay	
Richman	Scott	Alderman	Letts
Barker	Julin	Criser	Overton
Karl	Stiff	Aurell	J. Smith
Margolis	Yawn	Gordon	D'Alemberte
Reno	Frost	Grimes	Fawsett
Hunter		Hubbard	Friday
		Richman	Upchurch
		Clark	

Motion to amend the constitution to expand the jurisdiction of the supreme court by granting the court "reach-down" authority to review any case of exceptional importance without the need for certification by the district court of appeal. A motion that this proposal be approved was rejected by a vote of 3 yes, 23 no.

Votes of the Commission members:

Yea	Nay	
Reno	Alderman	Margolis
Hunter	Criser	Overton
Stiff	Aurell	J. Smith
	Gordon	D'Alemberte
	Richman	Fawsett
	Grimes	Scott
	Barker	Julin
	Hubbard	Yawn
	Richmond	Friday
	Clark	Upchurch
	Letts	Frost
	Karl	

Vote on Recommendation 10:

Motion to amend article V, section 3(b)(5), to substitute "in which a proceeding is pending" for the current language "in which an appeal is pending." A motion that this proposal be approved was passed 26 to 0, with the understanding that this amendment will allow the district courts to "pass through" by certification to the supreme court cases which reach the district court by petition for a writ of certiorari. The Commission also approved a motion, by a vote of 20 to 5, to amend article V, section 3(b)(5), to allow the district court to "pass through" by certification to the supreme court original proceedings pending before the district court.

Votes of Commission members:

With regard to first motion:

Yea			Nay
Alderman	Clark	Fawsett	none
Criser	Letts	Scott	
Aurell	Karl	Julin	
Gordon	Margolis	Stiff	
Richman	Overton	Yawn	
Grimes	J. Smith	Friday	
Barker	Reno	Upchurch	
Hubbard	Hunter	Frost	
Richmond	D'Alemberte		

With regard to second motion:

Yea			Nay
Alderman	Clark	Scott	Richmond
Criser	Margolis	Julin	Letts
Aurell	Overton	Stiff	Karl
Gordon	J. Smith	Yawn	Fawsett
Richman	Reno	Upchurch	Friday
Grimes	Hunter	Frost	
Barker	D'Alemberte		

Vote on Recommendation 11:

Motion to expand the power of the district courts of appeal to order a hearing or rehearing en banc by amending Florida Rule of Appellate Procedure 9.331(a) to provide: "En banc hearings and rehearings shall not be ordered unless necessary to secure and maintain uniformity in the court's decisions or to resolve questions of exceptional importance." A motion that this proposal be approved was passed 21 to 0.

Votes of Commission members:

Yea		Nay
Alderman	Overton	none
Criser	J. Smith	
Aurell	Hunter	
Gordon	D'Alemberte	
Grimes	Fawsett	
Barker	Scott	
Hubbard	Julin	
Richmond	Stiff	
Clark	Yawn	
Letts	Friday	
Margolis		

Vote on Recommendation 12:

Motion proposing that district courts be allowed to review county court decisions when certified to the district court by a county court judge in a written opinion. This proposal specified that such certification be allowed from both final and non-final orders, as currently permitted under Florida Rule of Appellate Procedure 9.030(c)(1) allowing circuit court review of county court decisions. A motion to approve this proposal passed by 21 to 4. A motion that circuit court judges be allowed to "pass through" county court decisions to the district court was rejected by a vote of 7 yes, 14 no.

Votes of Commission members:

With regard to first motion:

Yea		Nay
Alderman	J. Smith	Criser
Aurell	Reno	Clark
Gordon	Hunter	Letts
Richman	D'Alemberte	Scott
Grimes	Fawsett	
Barker	Julin	
Hubbard	Stiff	
Richmond	Yawn	
Karl	Friday	
Margolis	Frost	
Overton		

With regard to second motion:

Yea		Nay	
Gordon		Alderman	Overton
Barker		Criser	J. Smith
Margolis		Grimes	Hunter
Reno		Hubbard	D'Alemberte
Scott		Richmond	Fawsett
Stiff		Clark	Julin
Frost		Letts	Yawn

Vote on Recommendation 13:

Motion to consider the establishment of specialized appellate courts. Note that no action was taken on this proposal. The Commission recognized, however, that specialized divisions in the district courts could be created without any constitutional change.

Vote on Recommendation 14:

Motion to amend the constitution to require that the judicial nominating commissions operate under uniform rules and operate under a presumption that the commissions' proceedings be open. The Commission passed, by a vote of 21 to 0, a motion proposing that the judicial nominating commissions at each level of the court system operate under rules which are uniform among the commissions nominating persons to fill vacancies for the courts at each level. This proposal specified that the rules would be subject to repeal by general law enacted on a majority vote of the membership of each house of the legislature or by a vote of five justices of the supreme court. At a later meeting, it was decided that the language of this proposal should track the language used in the constitution regarding the Judicial Qualifications Commission. This decision was by unanimous voice vote. A motion that all proceedings and records of the judicial nominating commissions be open to the public passed 16 to 5. The Commission rejected, by a vote of 8 yes, 13 no, an amendment to this motion which would have exempted deliberative sessions from the open-proceedings requirement. At a later meeting, the Commission voted 15 to 2 to reconsider the motion which would exempt the final deliberative proceedings of the judicial nominating commissions. On reconsideration, the motion before the Commission was whether to allow the judicial nominating commissions to deliberate and vote on nominations privately. The vote on this motion was 12 yes, 11 no (14 votes were needed to obtain a majority, so the motion failed).

Votes of Commission members:

Proposal regarding uniformity of rules:

Yea			Nay
Alderman	Karl	Fawsett	none
Gordon	Margolis	Scott	
Grimes	Overton	Julin	
Barker	J. Smith	Stiff	
Hubbard	Reno	Yawn	
Richmond	Hunter	Friday	
Clark	D'Alemberte	Frost	

Proposal regarding openness of proceedings:

Yea			Nay
Gordon	Overton	Scott	Alderman
Barker	J. Smith	Julin	Grimes
Hubbard	Reno	Stiff	Clark
Richmond	Hunter	Yawn	Fawsett
Karl	D'Alemberte	Frost	Friday
Margolis			

Vote on amendment to exempt deliberations from open-proceedings requirement:

Yea		Nay	
Alderman	Fawsett	Barker	Reno
Gordon	Scott	Hubbard	Hunter
Grimes	Yawn	Richmond	D'Alemberte
Clark	Friday	Karl	Julin
		Margolis	Stiff
		Overton	Frost
		J. Smith	

Following vote (by show of hands) to reconsider the issue of exempting deliberations and voting from open-proceedings requirement:

Yea		Nay	
Alderman	Letts	Barker	Hunter
Aurell	Fawsett	Richmond	D'Alemberte
Gordon	Scott	Karl	Julin
W. Smith	Yawn	Margolis	Stiff
Richman	Friday	Overton	Frost
Grimes	Upchurch	J. Smith	

Vote on Recommendation 15:

Motion to amend the constitution to provide for a judicial compensation commission. A motion to approve in concept a constitutional provision which includes an advisory judicial compensation commission passed 15 to 8. Following a motion to reconsider this proposal, the same proposal was again made and it passed by a vote of 14 yes, 8 no.

Votes of Commission members:

With regard to initial motion that the constitution include an advisory judicial compensation commission:

Yea		Nay
Alderman	Letts	Barker
Criser	Karl	Hubbard
Aurell	J. Smith	Margolis
Gordon	D'Alemberte	Reno
Richman	Fawsett	Hunter
Grimes	Scott	Julin
Richmond	Friday	Stiff
Clark		Frost

Following vote to reconsider:

Yea		Nay
Alderman	Overton	Barker
Aurell	D'Alemberte	Richmond
Gordon	Fawsett	Margolis
W. Smith	Julin	J. Smith
Richman	Stiff	Hunter
Grimes	Yawn	Scott
Letts	Friday	Upchurch
		Frost

Vote on Recommendation 16:

Motion to amend the constitution to eliminate all unnecessary provisions in article V, section 20. A motion to eliminate all obsolete provisions in section 20 passed unanimously by voice vote.

Vote of Commission members:

Motion passed unanimously by voice vote.

Vote on Recommendation 17:

Motion to amend the constitution concerning mandatory retirement for judges. A motion to amend the constitution to provide that all judges must retire by the age of seventy-two unless they have completed at least one-half of their term in which case they may serve until age seventy-five failed by a vote of 10 yes, 12 no. A motion to remove all age limitations with regard to judicial service failed by a vote of 3 yes, 19 no. A motion that the Commission recommend no change in the mandatory retirement age of seventy years passed 16 to 6.

Votes of Commission members:

Proposal to increase retirement age:

Yea		Nay	
Barker	Reno	Alderman	Overton
Hubbard	Fawsett	Criser	Hunter
Karl	Scott	Gordon	D'Alemberte
Margolis	Friday	Grimes	Julin
J. Smith	Frost	Richmond	Stiff
		Clark	Yawn

Proposal to remove all age restrictions:

Yea	Nay		
J. Smith	Alderman	Scott	D'Alemberte
Reno	Criser	Clark	Fawsett
Frost	Gordon	Karl	Julin
	Grimes	Margolis	Stiff
	Barker	Overton	Yawn
	Hubbard	Hunter	Friday
	Richmond		

Proposal to recommend no change:

Yea		Nay
Alderman	Hunter	Barker
Criser	D'Alemberte	Hubbard
Gordon	Fawsett	Margolis
Grimes	Scott	J. Smith
Richmond	Julin	Reno
Clark	Stiff	Frost
Karl	Yawn	
Overton	Friday	

Vote on Recommendation 18:

Motion to recommend no change in the constitution regarding the Judicial Qualifications Commission. The Commission passed, by a vote of 22 to 0, a proposal recommending no change. This motion was approved with the understanding that all information in the possession of the JQC regarding an applicant for judicial office or a retired judge requesting temporary assignment, upon the applicant's executing a waiver, would be released to the appropriate judicial nominating commission, the governor, and the chief justice.

Votes of Commission members:

Yea			Nay
Alderman	Clark	D'Alemberte	none
Criser	Karl	Fawsett	
Gordon	Margolis	Scott	
Grimes	Overton	Julin	
Barker	J. Smith	Stiff	
Hubbard	Reno	Yawn	
Richmond	Hunter	Friday	
Frost			

Vote on Recommendation 19:

Motion that the constitution be amended to remove bar discipline and admissions from supreme court supervision. A motion that this proposal be rejected passed 20 to 0.

Votes of Commission members:

Yea			Nay
Alderman	Clark	D'Alemberte	none
Criser	Karl	Fawsett	
Gordon	Margolis	Julin	
Grimes	Overton	Stiff	
Barker	J. Smith	Yawn	
Hubbard	Reno	Friday	
Richmond	Hunter		

Vote on Recommendation 20:

Motion to amend the constitution to split the office of the clerk of the circuit court so that there will be two officers, one appointed by the judges of the circuit in which the clerk sits and the other elected by the voters in the county. A motion to reject this proposal passed 16 to 6. A motion that the Commission's report state that the Commission considered this issue but decided not to propose an amendment to the constitution passed 23 to 0. The Commission's report is to state that there may be problems with the clerk system in some counties and that article V, section 16 provides a mechanism where, by general

or special law, the office of clerk of the circuit court may be divided "between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

Votes of Commission members:

Motion to reject constitutional change in present clerk system:

Yea		Nay
Criser	Karl	Alderman
Aurell	Margolis	Grimes
Gordon	J. Smith	Barker
Richman	Scott	Reno
Hubbard	Julin	Hunter
Richmond	Stiff	D'Alemberte
Clark	Friday	
Letts	Frost	

Vote on second motion:

Yea			Nay
Alderman	Richmond	D'Alemberte	none
Criser	Clark	Fawsett	
Aurell	Letts	Scott	
Gordon	Karl	Julin	
Richman	Margolis	Stiff	
Grimes	J. Smith	Friday	
Barker	Reno	Frost	
Hubbard	Hunter		

Vote on Recommendation 21:

Motion to amend the constitution to place workers' compensation deputy commissioners within article V. A motion to include all hearing officers within article V failed 9 yes, 12 no, and a motion to integrate workers' compensation deputy commissioners within artcile V failed 9 yes, 11 no.

Votes of Commission members:

Proposal regarding all hearing officers:

Yea		Nay	
Aurell	Reno	Alderman	Letts
W. Smith	Hunter	Gordon	Fawsett
Richmond	D'Alemberte	Richman	Julin
Karl	Scott	Grimes	Stiff
Margolis		Barker	Friday
		Hubbard	Frost

Proposal regarding deputy commissioners:

Yea		Nay	
Gordon	Hunter	Aurell	Reno
Richman	Julin	W. Smith	D'Alemberte
Barker	Stiff	Grimes	Fawsett
Hubbard	Friday	Richmond	Scott
Karl		Letts	Frost
		Margolis	

Vote on Recommendation 22:

Motion to amend the constitution to provide for a right to counsel in civil proceedings where state action is involved and a substantial right of the individual is affected. A motion to reject this proposal passed 21 to 2. A motion to place language in the Commission's report that the Commission considered the issue but feels that it goes beyond the scope of the Commission's mandate was approved unanimously by voice vote.

Votes of Commission members:

On motion to reject the proposal:

Yea			Nay
Alderman	Richmond	Hunter	Barker
Criser	Clark	Fawsett	D'Alemberte
Aurell	Letts	Scott	
Gordon	Karl	Julin	
Richman	Margolis	Stiff	
Grimes	Smith	Friday	
Hubbard	Reno	Frost	

On motion approving language in Commission's report:

Motion passed unanimously by voice vote.

Vote on Recommendation 23:

Motion to amend article V, section 20(c)(6), to provide that a person serving on a judicial nominating commission would not be disqualified from consideration by another judicial nominating commission with which that person had no membership or connection. A motion to approve this amendment passed 22 to 0.

Votes of Commission members:

Yea			Nay
Alderman	Letts	Scott	none
Aurell	Karl	Julin	
Gordon	Margolis	Stiff	
W. Smith	Overton	Yawn	
Richman	Hunter	Friday	
Grimes	D'Alemberte	Upchurch	
Barker	Fawsett	Frost	
Richmond			

Vote on Recommendation 24:

Motion to recommend that no change be made with regard to the supreme court's rule-making power. A motion to approve this recommendation passed unanimously by voice vote.

Votes of Commission members:

Motion passed unanimously by voice vote.