

Candidates for judicial office, other than the office of county court judge, shall qualify with the Division of Elections of the Department of State, and candidates for the office of county court judge shall qualify with the supervisor of elections of the county during the time period established by statute.¹

An alternative method of qualifying is statutorily set forth for persons seeking to qualify for election to the office of circuit judge or county court judge who are unable to pay the qualifying fee without imposing an undue financial burden.²

All candidates for judicial office must subscribe to an oath or affirmation in writing to be filed with the appropriate qualifying officer upon qualifying.³

2. *Filling Vacancies*

§ 259 **Generally**

Research References

West's Key Number Digest, Judges ☞3, 8

If a judicial vacancy is known in sufficient time to afford the electorate the opportunity to fill it, the Governor may call for a special election to fill the vacancy, rather than make an appointment from judicial nominating commission nominees.¹ On the other hand, where a special election would be impractical and an appointment would avoid an unreasonable vacancy, it is the Governor's duty to appoint an interim judge to serve until the vacancy is filled by an elected judge.²

§ 260 **Appointment process**

[Section 258]

¹§ 105.031(1), Fla. Stat., further specifying the forms to be used for qualifying.

As to the qualifying fee, see § 105.031(3), Fla. Stat.

As to the items that must be filed in order for a candidate for judicial office to be qualified, see § 105.031(5), Fla. Stat.

²§ 105.035, Fla. Stat.

³§ 105.031(4), Fla. Stat., setting forth the form of the oath.

[Section 259]

¹In re Advisory Opinion to the Governor, 600 So. 2d 460 (Fla. 1992); *Judicial Nominating Com'n, Ninth Circuit v. Graham*, 424 So. 2d 10 (Fla. 1982).

²In re Advisory Opinion to the Governor, 600 So. 2d 460 (Fla. 1992).

Research References

West's Key Number Digest, Judges ⇐3

The Governor is required to fill each vacancy in a judicial office by appointment for a term specified by statute. The Governor is to select from among no less than three nor more than six persons nominated by the appropriate judicial nominating commission.¹ Similarly, the Governor shall fill each vacancy on a circuit court or on a county court, wherein the judges are elected by a majority vote of the electors, by appointment for a specific term. The Governor is to select from among no less than three nor more than six 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.² Thus, the constitution requires that a judge's former seat be filled via gubernatorial appointment rather than the election process where filling the seat with the elected judge meant that the office would have remained vacant for six months.³

The nominations by the appropriate judicial nominating commission must be made within 30 days from the occurrence of a vacancy unless the period is extended by the Governor for a time not to exceed 30 days. The Governor is required to make an appointment to fill the vacancy within 60 days after the nominations have been certified to him or her.⁴

§ 261 Judicial nominating commissions**Research References**

West's Key Number Digest, Judges ⇐3

There is a separate judicial nominating commission for the supreme court, each district court of appeal, and each judicial

[Section 260]

¹Art. V, § 11(a), Fla. Const.
As to judicial nominating commissions, generally, see §§ 261, 262.

²Art. V, § 11(b), Fla. Const.

³Pincket v. Harris, 765 So. 2d 284 (Fla. Dist. Ct. App. 1st Dist. 2000).

⁴Art. V, § 11(c), Fla. Const.

circuit for all trial courts within the circuit.¹ The power and duty to promulgate rules for a judicial nominating commission rests with the members of the commission.² Accordingly, the Florida Constitution provides that uniform rules of procedure must be established by the 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.³

A judicial nominating commission's job begins when the Governor receives and accepts a judge's resignation, and its task is not affected by the date when the appointed judge begins to serve. Thus, commission members whose terms would expire before a judicial resignation would become effective and before an appointed judge would begin to serve could vote on nominations.⁴

Except for deliberations of the commissions, the proceedings of the commissions and their records must be open to the public.⁵ Vote sheets, ballots, and tally sheets created prior to and during candidate interviews by members of a judicial nominating commission are part of the members' deliberations and, as such, are specifically exempted by the constitution from public exposure.⁶

All acts of a judicial nominating commission are to be made with a concurrence of a majority of its members.⁷ No substantial conflict of interest is created by the employment of a judicial nominating-commission member in the same public agency as one of the applicants for a judicial vacancy that would preclude the commission member from voting on the applicant.⁸

Although a judicial nominating commission does not have

[Section 261]

¹Art. V, § 11(d), Fla. Const.

As to composition of commission and terms of members, see Art. V, § 20(c)(5) to (7), Fla. Const.

²In re Advisory Opinion to Governor, 276 So. 2d 25 (Fla. 1973).

³Art. V, § 11(d), Fla. Const.

⁴In re Advisory Opinion to the

Governor, 600 So. 2d 460 (Fla. 1992).

⁵Art. V, § 11(d), Fla. Const.

⁶The Justice Coalition v. The First Dist. Court of Appeal Judicial Nominating Com'n, 823 So. 2d 185 (Fla. Dist. Ct. App. 1st Dist. 2002).

⁷Art. V, § 20(c)(6), Fla. Const.

⁸Op. Att'y Gen. Fla. 96-63 (1996).

the authority to withdraw the names certified to the Governor, the commission may supplement that list with additional names and advise the Governor of any changed circumstances regarding the certified nominees at any time prior to the Governor's appointment to fill the vacancy.⁹

**§ 262 Judicial nominating commissions—
Composition of commission**

Research References

West's Key Number Digest, Judges ⇨3

Each judicial nominating commission shall be composed of three members appointed by the Board of Governors of the Florida Bar from among the Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, district or circuit;¹ three electors who reside in the territorial jurisdiction of the court or circuit appointed by the Governor;² and three electors who reside in the territorial jurisdiction of the court or circuit and who are not members of the bar of Florida, selected and appointed by a majority vote of the other six members of the commission.³

A former statute governing appointments to judicial nomination commissions under which one-third of the appointments were required to be members of minority group or women was not supported by a compelling interest and violated the Equal Protection Clause of the Federal Constitution; no showing had been made of prior discrimination by commissions in the screening of judicial applicants or of gross underrepresentation of minorities or women in the judiciary, and the state's desire for a diverse judicial selection system by itself was not sufficient to permit a race-conscious policy.⁴

⁹Op. Att'y Gen. Fla. 96-04 (1996).

²Art. V, § 20(c)(5)b, Fla. Const.

³Art. V, § 20(c)(5)c, Fla. Const.

[Section 262]

¹Art. V, § 20(c)(5)a, Fla. Const.

⁴Mallory v. Harkness, 895 F. Supp. 1556 (S.D. Fla. 1995).

COURTS AND JUDGES

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

PART TWO JUDGES

II. QUALIFICATIONS; SELECTION AND TENURE

B. *Terms and Selection of Judges and Justices*

2. *Filling Vacancies*

§ 259 **Generally**

Cases

Vacancy in office of merit retention judge, who was ineligible for retention due to mandatory retirement, would not occur until the expiration of the judge's term. West's F.S.A. Const. Art. 5, §§ 8, 10(a). Advisory Opinion to Governor re Judicial Vacancy Due to Mandatory Retirement, 940 So. 2d 1090 (Fla. 2006).

A judicial vacancy occurs when a letter of resignation is received and accepted by the Governor. Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations, 928 So. 2d 1218 (Fla. 2006).

§ 260 **Appointment process**

Cases

Although judge's resignation was not effective until after the qualifying period for judge's seat, a vacancy occurred when Governor accepted judge's resignation, and thus, vacancy had to be filled by appointment rather than election, where the qualifying period for the judge's seat had not yet commenced on the date his letter of resignation was accepted. West's F.S.A. Const. Art. 5, § 11(b); West's F.S.A. § 105.031(1). Advisory Opinion to Governor re Sheriff And Judicial Vacancies Due To Resignations, 928 So. 2d 1218 (Fla. 2006).

III. POWERS AND DUTIES

C. *Powers and Duties of Successor or Assigned Judges*

§ 268 **Generally**

Cases

Successor judge could not convert temporary order on father's request for change of custody to permanent order by relying solely on testimony presented to original trial judge at temporary hearing. Kirt v. Sharper, 940 So. 2d 1239 (Fla. Dist. Ct. App. 5th Dist. 2006).

While a trial judge has the power to vacate or modify a predecessor judge's interlocutory ruling, a successor judge should hesitate to undo the work of the other judge, if possible. Sanz v. Carter, 937 So. 2d 1126 (Fla. Dist. Ct. App. 4th Dist. 2006).

§ 270 **Power of successor judge with regard to final judgments and orders of predecessor judge**

Cases

Mother was entitled to reversal of judgment that terminated her parental rights in her four children, where judgment was entered by successor judge who did not preside over the trial as to mother's rights, and judgment contained findings that were inconsistent with the oral findings made by the original judge after the trial. In re L.B., 932 So. 2d 1148 (Fla. Dist. Ct. App. 2d Dist. 2006).

Successor judge who was assigned to sentence defendant on charge of aggravated assault on a police officer after 17-year sentence imposed by predecessor was reversed as vindictive, and who