

SUPREME COURT OF FLORIDA

Judicial Merit Retention



Standing (shown top to bottom, left to right): Justice Jorge Labarga, Justice Peggy A. Quince, Justice Ricky Polston and Justice James E.C. Perry.
Seated: Justice Barbara J. Pariente, Chief Justice Charles T. Canady; and Justice R. Fred Lewis.

By Thornton J. Williams, Williams McMillian PA

Established upon statehood in 1845, the Supreme Court of Florida is the highest court in the state and the final arbiter of Florida law. The jurisdiction of the Supreme Court of Florida is laid out in Article V, Section 3 of the Florida Constitution. The Supreme Court consists of seven judges: the Chief Justice and six Justices who are appointed by the Governor to 6-year terms and remain in office if retained in a general election near the end of each term.

In the mid-1970s, Florida's voters overwhelmingly approved a constitutional amendment requiring that a merit retention system be used for all appellate judges after concern was raised as to abuses in the previous system of contested elections. Under merit retention, the Governor appoints new Justices from a list of three to six names submitted by a Judicial Nominating Commission (JNC). Once appointed, Justices eventually must face the Florida voters in a "yes" or "no" vote as to whether they should remain on the bench.

Merit retention races are conducted on a statewide basis. Supreme Court justices and appeals court judges face the voters in merit retention elections every six years, except after their first appointments. Newly appointed justices and appeals court judges serve an initial term of at least one year and are then subject to the first merit retention reviews of their performances in the next general election. If not retained in office, the Justice will be replaced in the same manner as they were appointed.

Only those judges receiving approval from a majority of the voters may continue in office for another six-year term. If retained, the Justice serves a six-year term beginning in early January following the merit retention election. The Justices then will again face an up or down vote in the general election occurring just before the six-year term expires. If not retained in office, the Justice will be replaced through the JNC system. All terms of Justices end in early January of the year following their merit retention elections.

Terms for justices and appeals court judges are staggered so that not all

of them face the voters in the same election. In total, Florida has seven Supreme Court justices and 61 appeals court judges that face what has become a very political and daunting merit system.

In fact, it has become such an important process that every other year since 1978, the Florida Bar has polled its members about the Supreme Court justices and appeals court judges who will be on the biennial November general election ballot in merit retention elections to gauge whether they believe these Justices should keep their jobs.

Since the merit system was adopted in the 1970s, few justices have had to conduct campaigns. In fact, in past years, the vote in favor of retaining the Supreme Court justices has always been overwhelmingly positive.

However, this year has proven much different. On this year's general election ballots, voters statewide will determine whether three justices remain on the bench of Florida's highest state court (Justices R. Fred Lewis, Barbara Pariente and Peggy Quince). In fact, Florida Governor Rick Scott nearly got a chance to replace the three veteran state

Supreme Court justices when Justices Lewis, Pariente and Quince almost missed the noon Friday deadline in order to qualify for the ballot this year. State election records show that the justices turned in their qualifying forms with minutes to spare.

Surprisingly, Florida's top fundraisers for the first quarter of this year were the three Florida's Supreme Court justices who face merit retention in November. The three justices are expected to be targeted in campaigns calling for their replacement due to their lead and/or participation in rulings that have been sharply criticized by Republican politicians. For example, Pariente was recently the lead author of a decision to strike down a state Senate redistricting plan that required the Florida Legislature to hold a special session to redo the redistricting plan.

With increasing fear of being targeted by opposition groups seeking to increase political influence over court rulings, Justices are now working harder than ever to secure their positions through increased fundraising efforts. All three Justices have fundraising efforts in an amount that, when combined, ranks among the most ever for a retention race. The system based on merit is now being threatened to become one based on politics.

While Florida's justices are barred from soliciting funds themselves and must instead appoint a committee to handle all campaign finances, they are allowed to coordinate and share campaign expenses. They must maintain separate campaign accounts and are not allowed to endorse each other. Additionally, contributions are limited to \$500 per person.

Despite attempts since 1976 to have lawmakers approve additional reforms that would extend merit selection and merit retention to the trial court level, no final bill has ever passed the state legislature. ■

About the Author:



Thornton J. Williams is the former General Counsel for FDOT, and he is the Managing Partner at Williams McMillian PA. He may be reached at 850-224-3999 or email at twilliams@twalaw.com. To read other articles by Thornton go to twalaw.com.

**Cardno
TBE**
Shaping the Future

FOCUSED
ON EVERY DETAIL

- Asset Management / GIS
- Brownfields Redevelopment Consulting
- Civil Engineering
- Construction Engineering & Inspection
- Environmental Engineering
- Highway and Bridge Design
- Right-of-Way Acquisition and Relocation
- Site Development
- Subsurface Utility Engineering (SUE)
- Survey and Mapping
- Traffic Operations and Safety
- Transportation Planning and Design
- Urban and Land Planning
- Utility Design and Coordination
- Water Resources / Stormwater Management
- Water / Wastewater

380 Park Place Blvd., Suite 300
Clearwater, FL 33750
800.861.8314 www.CardnoTBE.com