

1 House Joint Resolution

2 A joint resolution proposing an amendment to Section 2 of
 3 Article V of the State Constitution to provide that no
 4 court may adopt rules of practice and procedure, the
 5 supreme court may recommend rules to be adopted, amended
 6 or rejected by the legislature, and providing that, in the
 7 event of conflict, a statute supersedes a rule.

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 9 Be It Resolved by the Legislature of the State of Florida:

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 11 That the following amendment to Section 2 of Article V of
 12 the State Constitution is agreed to and shall be submitted to
 13 the electors of this state for approval or rejection at the next
 14 general election or at an earlier special election specifically
 15 authorized by law for that purpose:

16 ARTICLE V

17 Judiciary

18 SECTION 2. Administration; practice and procedure.-

19 (a) No court ~~The supreme court~~ shall have the power,
 20 express or implied, to adopt rules for ~~the~~ practice and
 21 procedure in any court. Court rules of practice and procedure
 22 may be recommended by the supreme court to be adopted, amended
 23 or rejected by the legislature in a manner prescribed by general
 24 law. If there is a conflict between general law and a court
 25 rule, the general law supersedes the court rule ~~all courts~~
 26 ~~including the time for seeking appellate review, the~~
 27 ~~administrative supervision of all courts, the transfer to the~~
 28 ~~court having jurisdiction of any proceeding when the~~

29 ~~jurisdiction of another court has been improvidently invoked,~~
 30 ~~and a requirement that no cause shall be dismissed because an~~
 31 ~~improper remedy has been sought. The supreme court shall adopt~~
 32 ~~rules to allow the court and the district courts of appeal to~~
 33 ~~submit questions relating to military law to the federal Court~~
 34 ~~of Appeals for the Armed Forces for an advisory opinion. Rules~~
 35 ~~of court may be repealed by general law enacted by two thirds~~
 36 ~~vote of the membership of each house of the legislature.~~

37 (b) The chief justice of the supreme court shall be chosen
 38 by a majority of the members of the court; shall be the chief
 39 administrative officer of the judicial system; and shall have
 40 the power to assign justices or judges, including consenting
 41 retired justices or judges, to temporary duty in any court for
 42 which the judge is qualified and to delegate to a chief judge of
 43 a judicial circuit the power to assign judges for duty in that
 44 circuit.

45 (c) A chief judge for each district court of appeal shall
 46 be chosen by a majority of the judges thereof or, if there is no
 47 majority, by the chief justice. The chief judge shall be
 48 responsible for the administrative supervision of the court.

49 (d) A chief judge in each circuit shall be chosen from
 50 among the circuit judges as provided by supreme court rule. The
 51 chief judge shall be responsible for the administrative
 52 supervision of the circuit courts and county courts in his
 53 circuit.

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 55 BE IT FURTHER RESOLVED that the following statement be
 56 placed on the ballot:

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CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 2

RULES OF COURT.—Proposing an amendment to the State Constitution regarding court rulemaking.

Under the current constitution, Florida court rules are adopted solely by the state supreme court, and laws that are adopted by the legislature and approved by the Governor which conflict with those court rules are ruled invalid by the same state supreme court. One state court has expressed an opinion that the courts have an inherent right to enact rules even if such right is not provided for in the state constitution. By contrast, in the federal court system, court rules of practice and procedure are subordinate to general federal law and are subject to the approval of Congress before they are enacted.

By this amendment, no state court, including the Florida Supreme Court, will have the express or implied power to adopt court rules of practice and procedure. The Supreme Court may recommend rules of practice and procedure that may be adopted, amended or rejected in a manner provided for in general law. If there is a conflict between a court rule and a general law, the general law would prevail.

In short, a general law in Florida is enacted if passed by a majority of members voting in each of the two legislative chambers and then either signed by the Governor or, if vetoed by

84 the Governor, then passed by a two-thirds vote of the members
 85 voting in each of the two legislative chambers.

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 87 Specifically, the proposal amends subsection (a) of section
 88 2 of Article V of the State Constitution, to read as set forth
 89 below. The words ~~stricken~~ are deletions; words underlined are
 90 additions:

91
 92 SECTION 2. Administration; practice and procedure.—

93 (a) No court ~~The supreme court~~ shall have the power,
 94 express or implied, to adopt rules for the practice and
 95 procedure in any court. Court rules of practice and procedure
 96 may be recommended by the supreme court to be adopted, amended
 97 or rejected by the legislature in a manner prescribed by general
 98 law. If there is a conflict between general law and a court
 99 rule, the general law supersedes the court rule ~~all courts~~
 100 ~~including the time for seeking appellate review, the~~
 101 ~~administrative supervision of all courts, the transfer to the~~
 102 ~~court having jurisdiction of any proceeding when the~~
 103 ~~jurisdiction of another court has been improvidently invoked,~~
 104 ~~and a requirement that no cause shall be dismissed because an~~
 105 ~~improper remedy has been sought. The supreme court shall adopt~~
 106 ~~rules to allow the court and the district courts of appeal to~~
 107 ~~submit questions relating to military law to the federal Court~~
 108 ~~of Appeals for the Armed Forces for an advisory opinion. Rules~~
 109 ~~of court may be repealed by general law enacted by two-thirds~~
 110 ~~vote of the membership of each house of the legislature.~~