

**Constitution Revision Commission
Executive Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 6

Relating to: JUDICIARY, creates s. 21

Introducer(s): Commissioner Martinez and others

Article/Section affected: Article V, section 21

Date: January 29, 2018

	REFERENCE	ACTION
1.	<u>JU</u>	Favorable
2.	<u>EX</u>	Pre-meeting

I. SUMMARY:

The proposal creates Section 21 of Article V of the Florida Constitution. The proposal requires any state court or administrative law judge to interpret a state statute or rule de novo (anew, without reference to any previous legal conclusion), independent of an agency's interpretation, in any litigation proceedings between a private party and an administrative agency.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, state courts and administrative judges within Florida generally defer to an administrative agency's interpretation of a statute or rule. When judicial review is undertaken by the courts, the Florida Supreme Court has shown a substantial deference to an agency's interpretation. The court has stated "(Commission orders) come to this court clothed with a presumption of validity."¹ The court has further clarified their position by stating that an agency interpretation will be upheld if it meets three key factors:

- 1) It complies with the essential requirements of law,
- 2) It is based on competent substantial evidence, and
- 3) It upholds the legislative intent of the statute or rule.²

It should be noted that when an agency is interpreting a statute through rulemaking, if an agency is exceeding its rulemaking authority authorized by statute, the agency does not

¹ *Tallahassee v. Mann*, 411 So. 2d 162 (Fla. 1982).

² *Fla. Cable TV Ass'n v. Deason*, 635 So. 2d 14 (Fla. 1994).

get deference. An agency statement of general applicability that “implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency” is a rule and must be adopted through rulemaking and published in the Florida Administrative Code.³ If an agency interpretation of a statute amounts to a rule, based on the previous definition, but has not been adopted through rulemaking, then an administrative law judge (ALJ) and an agency cannot base agency action on that rule. Section 120.57(1)(e), F.S., states that “[a]n agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.”

More recently, the court has shown even greater deference to an agency’s interpretation, stating, “an agency’s interpretation of a statute it is charged with enforcing is entitled great deference and will be approved by this court if it is not clearly erroneous.”⁴ One exception provides that an agency’s interpretation of a statute it administers will not receive deference unless the agency is relying on its particular expertise on the subject matter of the statute in question.⁵ Another exception to the deference doctrine arises when there is a dispute over how to interpret a statute that imposes discipline on a person or entity. In those situations, case law provides that the statute imposing discipline shall be strictly construed against the agency.⁶ Additionally, courts in Florida do not show deference to agency interpretation of a taxation statute with a disciplinary or penalty provision.⁷ The ALJs at the Division of Administrative Hearings have generally followed the precedent established by appellate case law.⁸

B. EFFECT OF PROPOSED CHANGES:

This proposal eliminates the deference of the courts to an agency’s interpretation and requires the courts to examine and determine, on their own, whether specific interpretations by the agency comply with the statute or rule in question. Deference shown to agency interpretations of state statute or rule would no longer apply in any situation.

C. FISCAL IMPACT:

Indeterminate.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

³ Section 120.52(8), F.S.

⁴ *Fla. Interexchange Carriers Ass’n v. Clark*, 678 So. 2d 1267 (Fla. 1996).

⁵ *Bd. of Trustees of the Northwest Fla. Community Hosp. v. Dep’t of Mgmt. Serv.*, 651 So. 2d 170 (Fla. 1st DCA 1995).

⁶ *Jonas v. Dep’t of Bus. & Prof’l Regulation*, 746 So. 2d 1261 (Fla. 3rd DCA 2000).

⁷ *Gulf American Land Corp. v. Green*, 149 So. 2d 396 (Fla. 1st DCA 1962).

⁸ Administrative Law Section of the Florida Bar, Analysis of Proposal 6, p. 3, 2017 (on file with CRC staff).

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.