

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 835**Session of
1987

INTRODUCED BY HAGARTY, McHALE, MOEHLMANN, SIRIANNI, CORNELL,
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HERMAN, BATTISTO, SHOWERS, SEMMEL, FOX, LASHINGER, HECKLER,
FLICK AND FISCHER, MARCH 16, 1987

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 16, 1987

A JOINT RESOLUTION

1 Proposing amendments to the Constitution of the Commonwealth of
2 Pennsylvania, changing provisions relating to judicial
3 discipline; creating a judicial council; and further
4 providing for the supervision of the practice of law, for
5 financial disclosure, for budgeting and for the financial
6 affairs of the judiciary.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby resolves as follows:

9 Section 1. The following amendments to the Constitution of
10 Pennsylvania are proposed in accordance with Article XI:

11 (1) That section 10 of Article V be amended to read:

12 § 10. Judicial administration.

13 (a) The Supreme Court shall exercise general supervisory and
14 administrative authority over all the courts and justices of the
15 peace, including authority to temporarily assign judges and
16 justices of the peace from one court or district to another as
17 it deems appropriate.

18 (b) The Supreme Court shall appoint a court administrator

1 and may appoint such subordinate administrators and staff as may
2 be necessary and proper for the prompt and proper disposition of
3 the business of all courts and justices of the peace.

4 (c) The Supreme Court shall have the power to prescribe
5 general rules governing practice, procedure and the conduct of
6 all courts, justices of the peace and all officers serving
7 process or enforcing orders, judgments or decrees of any court
8 or justice of the peace, including the power to provide for
9 assignment and reassignment of classes of actions or classes of
10 appeals among the several courts as the needs of justice shall
11 require, and for admission to the bar [and to practice law,] and
12 the administration of all courts and supervision of all officers
13 of the Judicial Branch, if such rules are consistent with this
14 Constitution and neither abridge, enlarge nor modify the
15 substantive rights of any litigant, nor affect the right of the
16 General Assembly to determine the jurisdiction of any court or
17 justice of the peace, nor suspend nor alter any statute of
18 limitation or repose. All laws shall be suspended to the extent
19 that they are inconsistent with rules prescribed under these
20 provisions.

21 (d) The Supreme Court shall issue general rules providing
22 for the practice of law, which rules shall provide for the
23 creation of an Attorney Disciplinary Board. The board shall
24 consider and investigate the conduct of any person admitted to
25 practice and shall have the power to discipline such persons by
26 reprimand, censure, suspension, disbarment or such other action
27 as may be provided by the rules of the Supreme Court. Any person
28 who is the subject of an order of discipline by the board may
29 seek review of the order by the Supreme Court within such time
30 limits as the court may by general rule provide and the court

1 may review, affirm, revise or reject the order of discipline. In
2 addition, upon the petition of at least one-third of the members
3 of the board to review a decision by the board to discipline or
4 to dismiss a disciplinary matter, the court may affirm, revise
5 or reject the decision of the board.

6 [(d)] (e) The Chief Justice and president judges of all
7 courts with seven or less judges shall be the justice or judge
8 longest in continuous service on their respective courts; and in
9 the event of his resignation from this position the justice or
10 judge next longest in continuous service shall be the Chief
11 Justice or president judge. The president judges of all other
12 courts shall be selected for five-year terms by the members of
13 their respective courts, except that the president judge of the
14 traffic court in the City of Philadelphia shall be appointed by
15 the Governor. A Chief Justice or president judge may resign such
16 position and remain a member of the court. In the event of a tie
17 vote for office of president judge in a court which elects its
18 president judge, the Supreme Court shall appoint as president
19 judge one of the judges receiving the highest number of votes.

20 [(e)] (f) Should any two or more justices or judges of the
21 same court assume office at the same time, they shall cast lots
22 forthwith for priority of commission, and certify the results to
23 the Governor who shall issue their commissions accordingly.

24 (g) There shall be a Judicial Council of Pennsylvania which
25 shall advise the Supreme Court in the administration of the
26 unified judicial system. The council shall be composed of 15
27 members; four of whom shall be members of the General Assembly
28 with one designated by the President pro tempore of the Senate,
29 one by the Minority Leader of the Senate, one by the Speaker of
30 the House of Representatives and one by the Minority Leader of

1 the House of Representatives. The Governor shall appoint a
2 member. The Chief Justice shall appoint ten members which shall
3 include the Court Administrator of Pennsylvania, judges, members
4 of the bar of the Supreme Court and non-lawyer electors. The
5 council shall meet at least quarterly and shall annually submit
6 a report to the Supreme Court and the General Assembly which
7 shall include recommendations for improving the operations of
8 the unified judicial system and other related matters.

9 (2) That section 17 of Article V be amended to read:

10 § 17. Prohibited activities and financial disclosure.

11 (a) Justices and judges shall devote full time to their
12 judicial duties, and shall not engage in the practice of law,
13 hold office in a political party or political organization, or
14 hold an office or position of profit in the government of the
15 United States, the Commonwealth or any municipal corporation or
16 political subdivision thereof, except in the armed service of
17 the United States or the Commonwealth.

18 (b) Justices and judges shall not engage in any activity
19 prohibited by law and shall not violate any canon of legal or
20 judicial ethics prescribed by the Supreme Court. Justices of the
21 peace shall be governed by rules or canons which shall be
22 prescribed by the Supreme Court.

23 (c) No justice, judge or justice of the peace shall be paid
24 or accept for the performance of any judicial duty or for any
25 service connected with his office, any fee, emolument or
26 perquisite other than the salary and expenses provided by law.

27 (d) No duties shall be imposed by law upon the Supreme Court
28 or any of the justices thereof or the Superior Court or any of
29 the judges thereof, except such as are judicial, nor shall any
30 of them exercise any power of appointment except as provided in

1 this Constitution.

2 (e) The Supreme Court shall promulgate financial disclosure
3 requirements for all justices, judges, justices of the peace and
4 other officers or employees of the unified judicial system which
5 shall provide for no less disclosure than provided by the
6 General Assembly by law for public officers generally.

7 (3) That section 18 of Article V be amended to read:

8 § 18. Suspension, removal, discipline and compulsory
9 retirement.

10 (a) [There shall be a Judicial Inquiry and Review Board
11 having nine members as follows: three judges of the courts of
12 common pleas from different judicial districts and two judges of
13 the Superior Court, all of whom shall be selected by the Supreme
14 Court; and two non-judge members of the bar of the Supreme Court
15 and two non-lawyer electors, all of whom shall be selected by
16 the Governor.] There shall be a Judicial Conduct Board having 11
17 members as follows: one active judge of the court of common
18 pleas appointed by the Chief Justice; one active judge of an
19 appellate court appointed by the Chief Justice; one active
20 justice of the peace appointed by the Governor; one non-judge
21 member of the bar of the Supreme Court appointed by the
22 President pro tempore of the Senate; one non-judge member of the
23 bar of the Supreme Court appointed by the Speaker of the House
24 of Representatives; two non-lawyer electors appointed by the
25 Governor; one non-lawyer elector appointed by the Majority
26 Leader of the Senate; one non-lawyer elector appointed by the
27 Minority Leader of the Senate; one non-lawyer elector appointed
28 by the Majority Leader of the House of Representatives; and one
29 non-lawyer elector appointed by the Minority Leader of the House
30 of Representatives. No member of the General Assembly shall be

1 eligible for membership on the board.

2 (b) [The] Except for the initial appointees whose terms
3 shall be provided by the schedule to this amendment, the members
4 shall serve for terms of four years, provided that a member,
5 rather than his successor, shall continue to participate in any
6 hearing in progress at the end of his term. Board membership by
7 a judge shall terminate if the member ceases to hold the
8 judicial position that qualified him for the appointment.
9 Membership shall also terminate if a member attains a position
10 that would have rendered him ineligible for appointment at the
11 time of his appointment. A vacancy on the board shall be filled
12 by the respective appointing authority for the balance of the
13 term. The respective appointing authority may remove a member
14 only for cause. No member shall serve more than four consecutive
15 years[; he] but may be reappointed after a lapse of one year.
16 [Annually] The Governor shall convene the board for its first
17 meeting, and at that meeting and annually thereafter the members
18 of the board shall elect a chairman. The board shall act only
19 with the concurrence of a majority of its members.

20 (c) A member shall not hold office in a political party or
21 political organization. [Members, other than judges, shall be
22 compensated for their services as the Supreme Court shall
23 prescribe.] All members shall be reimbursed for expenses
24 necessarily incurred in the discharge of their official duties.
25 The board shall appoint a full-time executive director, a
26 counsel and such other staff as it shall deem necessary and
27 proper, shall adopt rules for its operation and shall annually
28 submit a proposed operating budget to the General Assembly and
29 the Governor.

30 (d) Under the procedure prescribed herein, any justice [or],

1 judge or justice of the peace may be suspended, removed from
2 office or otherwise disciplined or censured for violation of
3 section 17 of this article, misconduct in office, neglect of
4 duty, failure to perform [his duties] the duties of that office,
5 or conduct which prejudices the proper administration of justice
6 or brings the judicial office into disrepute, whether or not
7 such conduct occurred while acting in a judicial capacity or is
8 prohibited by law, and may be retired for disability seriously
9 interfering with the performance of his duties.

10 (e) The board shall keep informed as to matters relating to
11 grounds for suspension, removal, discipline, censure or
12 compulsory retirement of justices [or], judges or justices of
13 the peace. It shall receive complaints or reports, formal or
14 informal, from any source pertaining to such matters, and shall
15 make such preliminary investigations as it deems necessary,
16 which preliminary investigations shall be confidential.

17 (f) The board, after such investigation and having found
18 probable cause, may order a hearing concerning the suspension,
19 removal, discipline, censure or compulsory retirement of a
20 justice [or], judge or justice of the peace. The board's orders
21 for attendance of or testimony by witnesses or for the
22 production of documents at any hearing or investigation shall be
23 enforceable by contempt proceedings. Any hearing ordered by the
24 board shall be conducted consistent with the principles of due
25 process and the rules of evidence and shall be confidential
26 except that the justice, judge or justice of the peace who is
27 the subject of the proceeding may waive confidentiality. The
28 filing of papers with the board and the giving of testimony
29 before the board shall be privileged.

30 (g) [If, after hearing, the board finds good cause therefor,

1 it shall recommend to the Supreme Court the suspension, removal,
2 discipline or compulsory retirement of the justice or judge.]
3 If, after hearing, the board finds good cause therefor, it shall
4 order that a justice, judge or justice of the peace be
5 suspended, removed, disciplined, censured or compulsorily
6 retired. The board shall file the record of any hearing
7 conducted by it with the Supreme Court within ten days of its
8 decision whether or not it ordered suspension, removal,
9 discipline, censure or compulsory retirement. Upon the filing,
10 the board shall make public the nature and disposition of each
11 charge, all findings of fact, and an opinion containing
12 conclusions of law and any order of the board. The information
13 shall be made available for public inspection at the principal
14 office of the board.

15 (h) [The Supreme Court shall review the record of the
16 board's proceedings on the law and facts and may permit the
17 introduction of additional evidence. It shall order suspension,
18 removal, discipline or compulsory retirement, or wholly reject
19 the recommendation, as it finds just and proper. Upon an order
20 for compulsory retirement, the justice or judge shall be retired
21 with the same rights and privileges were he retired under
22 section 16 of this article. Upon an order for suspension or
23 removal, the justice or judge shall be suspended or removed from
24 office, and his salary shall cease from the date of such order.
25 All papers filed with and proceedings before the board shall be
26 confidential but upon being filed by the board in the Supreme
27 Court, the record shall lose its confidential character. The
28 filing of papers with and the giving of testimony before the
29 board shall be privileged.] Upon the rendering of a decision by
30 the board, the procedure shall be as follows:

1 (1) The justice, judge or justice of the peace involved may
2 either accept the order of the board or make written request to
3 the Chief Justice within 30 days after receipt of the
4 determination for a review thereof by the Supreme Court.

5 (2) If the justice, judge or justice of the peace accepts
6 the order of the board or fails to request a review thereof by
7 the Supreme Court, the board shall thereupon order the
8 suspension, removal, discipline, censure or compulsory
9 retirement of the justice, judge or justice of the peace. Upon
10 an order for compulsory retirement, the justice, judge or
11 justice of the peace shall be retired with the same rights and
12 privileges were he retired under section 16 of this article.
13 Upon an order for suspension or removal, the justice, judge or
14 justice of the peace shall be suspended or removed from office
15 and his salary shall cease from the date of the order.

16 (3) (i) If the justice, judge or justice of the peace seeks
17 review of an order of the board, the Supreme Court or, in the
18 case of a justice, an ad hoc court as set forth in subclause
19 (ii) shall review the board's findings of fact and conclusions
20 of law and the record of the proceedings upon which the board's
21 determination was based and may allow the introduction of
22 additional evidence. After the review, the Supreme Court or the
23 ad hoc court, as the case may be, may affirm, revise or reject
24 the ordered sanction.

25 (ii) In the event a Supreme Court justice is involved and
26 seeks review of an order of the board, the Court Administrator
27 of Pennsylvania Courts shall supervise the selection of an ad
28 hoc court of seven judges to be chosen by drawing lots from the
29 total combined membership of the Superior and Commonwealth
30 Courts other than senior judges. The ad hoc court shall conduct

1 a review as set forth in subclause (i) and its decision shall
2 have the same effect as if rendered by the Supreme Court.

3 (4) If, after hearing, the board decides not to order
4 suspension, removal, discipline, censure or compulsory
5 retirement, the Supreme Court or ad hoc court, as the case may
6 be, may, on its own motion, and shall, upon the petition of at
7 least three members of the board, have the board's decision
8 reviewed. After the review, the Supreme Court or ad hoc court
9 may affirm the decision of the board or impose a sanction upon
10 the justice, judge or justice of the peace.

11 (5) In reviewing an order of the board under clauses (3) and
12 (4), the Supreme Court or ad hoc court shall complete its review
13 and render its judgment within 60 days of the request for
14 review. If the review is not completed and judgment not rendered
15 within 60 days, the order of the board shall be imposed by the
16 board. At the end of the 60-day period, whether or not the
17 review is completed, the entire record of the board and the
18 Supreme Court or ad hoc court shall be made public and made
19 available for public inspection at the principal office of the
20 board.

21 (i) No justice [or], judge or justice of the peace shall
22 participate as a member of the board or of the Supreme Court in
23 any proceeding involving his suspension, removal, discipline or
24 compulsory retirement.

25 (j) No judge shall participate as a member of the board in
26 any proceeding involving a judge of the same court. No member
27 shall participate as a member of the board in any proceeding
28 involving a justice, judge or justice of the peace who resides
29 in the same county as that of the board member.

30 [(j)] (k) The Supreme Court shall prescribe rules of

1 procedure [under this section] for its review of decisions by
2 the board.

3 [(k) The Supreme Court shall prescribe rules of procedure
4 for the suspension, removal, discipline and compulsory
5 retirement of justices of the peace.]

6 (l) A justice, judge or justice of the peace convicted of
7 misbehavior in office by a court, disbarred as a member of the
8 bar of the Supreme Court or removed under this section 18 shall
9 forfeit automatically his judicial office and thereafter be
10 ineligible for judicial office.

11 (m) A justice or judge who shall file for nomination for or
12 election to any public office other than a judicial office shall
13 forfeit automatically his judicial office.

14 (n) This section is in addition to and not in substitution
15 for the provisions for impeachment for misbehavior in office
16 contained in Article VI. No justice, judge or justice of the
17 peace against whom impeachment proceedings are pending in the
18 Senate shall exercise any of the duties of his office until he
19 has been acquitted.

20 (4) That Article V be amended by adding a section to read:
21 § 19. Financial affairs and budgets.

22 (a) As provided by law, the Supreme Court shall annually
23 submit to the Governor and the General Assembly proposed
24 operating budgets for the ensuing fiscal year for the Supreme
25 Court, Superior Court, Commonwealth Court, Court Administrator
26 and other statewide agencies, committees and statewide units of
27 the unified judicial system setting forth in detail proposed
28 expenditures classified by court, agency, committee or unit for
29 the year.

30 (b) The General Assembly shall include such operating budget

1 appropriations for the Supreme Court, Superior Court,
2 Commonwealth Court, Court Administrator and other statewide
3 agencies, committees and statewide units of the unified judicial
4 system as the General Assembly shall determine to be necessary
5 and reasonable in the general appropriation bill or such
6 separate appropriation bill as it deems appropriate. No moneys
7 shall be paid out of the State Treasury for the operation of the
8 unified judicial system except pursuant to an appropriation
9 approved by the General Assembly and upon warrant issued by the
10 proper officer.

11 (c) All fees, charges and other moneys received by the
12 Supreme Court, Superior Court, Commonwealth Court or other
13 statewide agency, committee or statewide unit of the unified
14 judicial system, with the exception of payments mandated to a
15 party by court order and fees assessed by the Attorney
16 Disciplinary Board or for a client security fund, shall be
17 deposited in the State Treasury for appropriation by the General
18 Assembly or as the General Assembly may otherwise provide by
19 law.

20 (d) The financial affairs of the Supreme Court, Superior
21 Court, Commonwealth Court or other court, agency, committee or
22 unit of the unified judicial system shall be subject to audits
23 made in accordance with generally accepted auditing standards
24 and shall be performed as the General Assembly may provide by
25 law.

26 Section 2. (a) The members of the Judicial Inquiry and
27 Review Board appointed heretofore shall vacate their office 60
28 days after the issuance of the proclamation certifying voter
29 approval of the amendments to section 18 of Article V and all
30 proceedings pending before the board and all records shall be

1 transferred to the Judicial Conduct Board.

2 (b) Of the members initially appointed to the Judicial
3 Conduct Board, the appellate judge shall be appointed for a two-
4 year term and the judge of the court of common pleas for a four-
5 year term. The members first appointed by the President pro
6 tempore of the Senate and the Speaker of the House of
7 Representatives shall serve four-year terms. The members first
8 appointed by the Majority Leader of the Senate and the Majority
9 Leader of the House of Representatives shall serve three-year
10 terms. The members first appointed by the Minority Leader of the
11 Senate and the Minority Leader of the House of Representatives
12 shall serve two-year terms. The justice of the peace first
13 appointed shall serve a three-year term. The non-lawyer elector
14 first appointed by the Governor shall serve a four-year term and
15 the second non-lawyer elector shall serve a two-year term.

16 Section 3. Paragraphs (1), (2), (3) and (4) of section 1
17 shall each be submitted by the Secretary of the Commonwealth as
18 a separate question to the qualified electors of this
19 Commonwealth at the primary, general or municipal election next
20 held after the advertising requirements of section 1 of Article
21 XI of the Constitution of Pennsylvania have been satisfied.