

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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Session of
1992

INTRODUCED BY CALTAGIRONE, KRUSZEWSKI, BILLOW, NOYE, PESCI,
SAURMAN, PISTELLA, LaGROTTA, VEON AND RITTER, MARCH 16, 1992

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 16, 1992

A JOINT RESOLUTION

1 Proposing amendments to the Constitution of the Commonwealth of
2 Pennsylvania, providing for judicial discipline.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby resolves as follows:

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

7 (1) 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.

17 (b) The members shall serve for terms of four years,

1 provided that a member, rather than his successor, shall
2 continue to participate in any hearing in progress at the end of
3 his term. A vacancy on the board shall be filled by the
4 respective appointing authority for the balance of the term. The
5 respective appointing authority may remove a member only for
6 cause. No member shall serve more than four consecutive years;
7 he may be reappointed after a lapse of one year. Annually the
8 members of the board shall elect a chairman. The board shall act
9 only with the concurrence of a majority of its members.

10 (c) A member shall not hold office in a political party or
11 political organization. Members, other than judges, shall be
12 compensated for their services as the Supreme Court shall
13 prescribe. All members shall be reimbursed for expenses
14 necessarily incurred in the discharge of their official duties.

15 (d) Under the procedure prescribed herein, any justice or
16 judge may be suspended, removed from office or otherwise
17 disciplined for violation of section 17 of this article,
18 misconduct in office, neglect of duty, failure to perform his
19 duties, or conduct which prejudices the proper administration of
20 justice or brings the judicial office into disrepute, and may be
21 retired for disability seriously interfering with the
22 performance of his duties.

23 (e) The board shall keep informed as to matters relating to
24 grounds for suspension, removal, discipline, or compulsory
25 retirement of justices or judges. It shall receive complaints or
26 reports, formal or informal, from any source pertaining to such
27 matters, and shall make such preliminary investigations as it
28 deems necessary.

29 (f) The board, after such investigation, may order a hearing
30 concerning the suspension, removal, discipline or compulsory

1 retirement of a justice or judge. The board's orders for
2 attendance of or testimony by witnesses or for the production of
3 documents at any hearing or investigation shall be enforceable
4 by contempt proceedings.

5 (g) If, after hearing, the board finds good cause therefor,
6 it shall recommend to the Supreme Court the suspension, removal,
7 discipline or compulsory retirement of the justice or judge.

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

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

26 (j) The Supreme Court shall prescribe rules of procedure
27 under this section.

28 (k) The Supreme Court shall prescribe rules of procedure for
29 the suspension, removal, discipline and compulsory retirement of
30 justices of the peace.

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

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

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

15 § 18. Judicial Conduct Board.

16 (a) There shall be a Judicial Conduct Board within the
17 executive branch, which shall be composed of a total of 12
18 members as follows: two judges, other than senior judges, one
19 from the court of common pleas and the other from either the
20 Superior Court or the Commonwealth Court; one district justice
21 who need not be a member of the bar of the Supreme Court; three
22 non-judge members of the bar of the Supreme Court; and six non-
23 lawyer electors.

24 (b) Lay members of the board shall be appointed by the
25 Governor, with the advice and consent of a majority of the
26 members elected to the Senate. The Senate shall act on each
27 nomination within 90 days of its submission. If the Senate does
28 not act on the nomination within 90 days, the appointment shall
29 occur automatically without the Senate's advice and consent. The
30 judges, district justices and the non-judge members of the bar

1 of the Supreme Court shall be appointed to the board by the
2 Supreme Court.

3 (c) Except for the initial appointees whose terms shall be
4 provided by the schedule to this article, the members shall
5 serve for terms of four years, provided that a member, rather
6 than that member's successor, shall continue to participate in
7 any hearing in progress at the end of that member's term. All
8 members shall be residents of this Commonwealth, and no more
9 than six of the 12 members shall be registered in the same
10 political party. Judicial Conduct Board membership of a judge or
11 district justice shall terminate if the member ceases to hold
12 the judicial position that qualified the member for the
13 appointment. Membership shall terminate if a member attains a
14 position that would have rendered the member ineligible for
15 appointment at the time of the appointment. A vacancy on the
16 board shall be filled by the respective appointing authority for
17 the remainder of the term to which the member was appointed. The
18 respective appointing authority may remove any member only for
19 cause. Cause shall be defined as a violation of any of the rules
20 of conduct prescribed by the Supreme Court. No member shall
21 serve more than four consecutive years but may be reappointed
22 after a lapse of one year. The Governor shall convene the board
23 for its first meeting, and at that meeting and annually
24 thereafter the members of the board shall elect a chairman. The
25 board shall act only with the concurrence of a majority of its
26 members.

27 (d) No member of the Judicial Conduct Board, during the
28 member's term of service, shall hold office in a political party
29 or political organization. Except for a judicial member, no
30 member of the Judicial Conduct Board, during the member's term

1 of service, shall hold a public office or public appointment,
2 compensated or uncompensated. All members shall be reimbursed
3 for expenses necessarily incurred in the discharge of their
4 official duties. The Supreme Court shall prescribe general rules
5 governing the conduct of members of the Judicial Conduct Board.

6 (e) The Judicial Conduct Board shall receive and investigate
7 complaints regarding judicial conduct filed by individuals or
8 initiated by the Judicial Conduct Board; issue subpoenas to
9 compel testimony under oath of witnesses, including the subject
10 of the investigation, and to compel the production of documents,
11 books, accounts and other records relevant to the investigation;
12 determine whether there is probable cause to file formal charges
13 against a justice, judge or district justice for conduct
14 proscribed in section 20 of this article, a finding of which
15 shall require the approval of a majority of the Judicial Conduct
16 Board; and present the case in support of the charges.

17 (f) The Judicial Conduct Board, by a majority vote, shall
18 appoint a chief counsel and other staff, prepare and administer
19 its own budget as provided by law, establish and promulgate its
20 own rules of procedure, prepare and disseminate an annual report
21 and do what is needed to ensure its efficient operation. The
22 budget request of the Judicial Conduct Board shall be made as an
23 item in the request of the Governor on behalf of the executive
24 branch of government to the General Assembly. The chief counsel
25 shall establish and direct an education division which shall
26 issue advisory opinions which shall be published by the Judicial
27 Conduct Board without reference to any names. These opinions
28 shall not be binding on the Court of Judicial Discipline,
29 although it may give weight to whether the subject of the
30 investigation had acted in accordance with the opinion.

1 (g) The justice, judge or district justice whose conduct is
2 the subject of an investigation by the Judicial Conduct Board
3 shall be given an opportunity to fully respond to the complaint.
4 The justice, judge or district justice shall be permitted to
5 compel testimony and the production of documents, books,
6 accounts and other records relevant to the investigation.

7 (h) Until a determination of probable cause has been made
8 and formal charges have been filed, all proceedings shall be
9 confidential except when the justice, judge or district justice
10 under investigation waives confidentiality or in any case in
11 which independent of any action by the Judicial Conduct Board
12 the fact that an investigation is in process becomes public. In
13 such instances, the Judicial Conduct Board may, at the direction
14 of the justice, judge or district justice under investigation,
15 issue a statement to confirm the pendency of the investigation,
16 to clarify the procedural aspects of the proceedings, to explain
17 the right of the justice, judge or district justice to a fair
18 hearing without prejudgment or to state that the justice, judge
19 or district justice denies the allegations.

20 (i) If on a complaint of mental or physical disability the
21 Judicial Conduct Board finds probable cause to file formal
22 charges against a justice, judge or district justice, the board
23 shall present its findings to the justice, judge or district
24 justice and provide him or her with the opportunity to resign
25 or, when appropriate, to enter a rehabilitation program before
26 the filing of formal charges.

27 (j) Members of the Judicial Conduct Board and its chief
28 counsel and staff shall be absolutely immune from suit for all
29 conduct in the course of their official duties. No civil action
30 or disciplinary complaint predicated on the filing of a

complaint or other documents with the Judicial Conduct Board or testimony before the Judicial Conduct Board shall be maintained against any complainant, witness or counsel.

(2) That Article V be amended by adding sections to read:

§ 19. Court of Judicial Discipline.

(a) There shall be a Court of Judicial Discipline within the judicial branch, which shall be composed of a total of seven members as follows: three judges other than senior judges from the court of common pleas, the Superior Court or the Commonwealth Court; one law-trained district justice; one member of the bar of the Supreme Court; and two non-lawyer electors.

Two judges and the two non-lawyer electors shall be appointed to the Court of Judicial Discipline by the Governor, with the advice and consent of a majority of the members elected to the Senate. The Governor shall nominate to the Senate the two judges and two non-lawyer electors from a list of names provided by the Supreme Court. The list shall contain three times the number of names as positions available. If the Senate refuses to consent to a nomination, the Governor shall present another nomination from the names remaining on the list provided by the Supreme Court. If the Senate again refuses to consent to a nomination, the Governor shall appoint from the list without the advice and consent of the Senate. The Senate shall act on each nomination within 90 days of its submission. The remaining judge, district justice and the non-judge member of the bar of the Supreme Court shall be appointed to the Court of Judicial Discipline by the Supreme Court.

(b) Except for the initial appointees whose terms shall be provided by the schedule to this article, each member shall serve for a term of four years, provided that a member, rather

1 than that member's successor, shall continue to participate in
2 any hearing in progress at the end of that member's term. All
3 members shall be residents of this Commonwealth, and no more
4 than four of the seven members shall be registered in the same
5 political party. Court of Judicial Discipline membership of a
6 judge or district justice shall terminate if the judge or
7 district justice ceases to hold the judicial position that
8 qualified the judge or district justice for Court of Judicial
9 Discipline appointment. Court of Judicial Discipline membership
10 shall terminate if a member attains a position that would have
11 rendered that person ineligible for appointment at the time of
12 the appointment. A vacancy on the court shall be filled by the
13 respective appointing authority for the remainder of the term to
14 which the member was appointed in the same manner in which the
15 original appointment occurred. The respective appointing
16 authority may remove any member only for cause. Cause shall be
17 defined as a violation of any of the rules of conduct prescribed
18 by the Supreme Court. No member of the Court of Judicial
19 Discipline shall serve more than four consecutive years but may
20 be reappointed after a lapse of one year.

21 (c) No member of the Court of Judicial Discipline, during
22 the member's term of service, shall hold office in any political
23 party or political organization. Except for a judicial member,
24 no member of the Court of Judicial Discipline, during the
25 member's term of service, shall hold a public office or public
26 appointment, compensated or uncompensated. All members of the
27 Court of Judicial Discipline shall be reimbursed for expenses
28 necessarily incurred in the discharge of their official duties.
29 The Supreme Court shall prescribe general rules governing the
30 conduct of members of the Court of Judicial Discipline.

1 (d) The Court of Judicial Discipline shall be a court of
2 record, with all the attendant duties and powers appropriate to
3 its function, and shall hold public proceedings, conducted
4 pursuant to rules adopted by the Supreme Court and in accordance
5 with the principles of due process and the law of evidence;
6 enable parties appearing before it to subpoena witnesses and to
7 compel the production of documents, books, accounts and other
8 records as relevant; render its decisions in writing, each
9 decision to include its finding of fact, conclusions of law and
10 discussion of reasons; have its proceedings transcribed; order
11 removal from office, suspension, censure or other discipline as
12 authorized by section 20 of this article and as warranted by the
13 record; appoint staff and prepare and administer its own budget
14 as provided by law; and do what is needed to ensure its
15 efficient operation. All actions of the Court of Judicial
16 Discipline, including disciplinary action, shall require
17 approval by a majority vote of the members of the court. The
18 budget request of the Court of Judicial Discipline shall be made
19 as an item in the request by the Supreme Court on behalf of the
20 judicial branch of government to the General Assembly.

21 (e) Upon the filing of formal charges by the Judicial
22 Conduct Board, the Court of Judicial Discipline shall promptly
23 schedule a hearing or hearings to determine whether a sanction
24 pursuant to the provisions of section 20 of this article should
25 be imposed. The Court of Judicial Discipline shall afford the
26 justice, judge or district justice full discovery and a fair
27 opportunity to prepare for the hearing or hearings. The justice,
28 judge or district justice shall be presumed innocent in any
29 proceeding before the Court of Judicial Discipline, and the
30 Judicial Conduct Board shall have the burden of proving the

1 charges by clear and convincing evidence.

2 (f) Members of the Court of Judicial Discipline and the
3 Court's staff shall be absolutely immune from suit for all
4 conduct in the course of their official duties, and no civil
5 action or disciplinary complaint predicated on testimony before
6 the Court of Judicial Discipline shall be able to be maintained
7 against any witness or their counsel.

8 § 20. Proscribed conduct and sanctions.

9 (a) Under the procedures prescribed in section 19 of this
10 article, any justice, judge or district justice may be
11 suspended, removed from office or otherwise disciplined for
12 conviction of a felony, violation of section 17 of this article,
13 misconduct in office, neglect or failure to perform the duties
14 of office or conduct which prejudices the proper administration
15 of justice or brings the judicial office into disrepute, whether
16 or not the conduct occurred while acting in a judicial capacity
17 or is prohibited by law, and for conduct in violation of a canon
18 or rule prescribed by the Supreme Court. In the case of a
19 mentally or physically disabled justice, judge or district
20 justice, the Court of Judicial Discipline may enter an order of
21 removal from office, retirement, suspension or other limitations
22 on the activities of the justice, judge or district justice as
23 warranted by the record. Upon a final order of the Court of
24 Judicial Discipline for suspension without pay or removal, prior
25 to any appeal, the justice or judge shall be suspended or
26 removed from office, and his or her salary shall cease from the
27 date of such order.

28 (b) Prior to a hearing, the Court of Judicial Discipline may
29 order suspended, without loss of salary, any justice, judge or
30 district justice against whom formal charges have been filed

1 with it by the Judicial Conduct Board or against whom there has
2 been filed an indictment or information charging a felony. An
3 order of suspension prior to a hearing, without loss of salary,
4 entered against a justice, judge or district justice against
5 whom formal charges have been filed with the Court of Judicial
6 Discipline by the Judicial Conduct Board or against whom there
7 has been filed an indictment or information charging a felony
8 shall not be immediately appealable.

9 (c) A justice, judge or district justice convicted of
10 misbehavior in office by a court, disbarred as a member of the
11 bar of the Supreme Court or removed under this section shall
12 forfeit automatically his or her judicial office and thereafter
13 be ineligible for judicial office.

14 (d) A justice, judge or district justice who shall file for
15 nomination for or election to any public office other than a
16 judicial office shall forfeit automatically his or her judicial
17 office.

18 (e) This section is in addition to and not in substitution
19 for the provisions for impeachment for misbehavior in office
20 contained in Article VI. No justice, judge or district justice
21 against whom impeachment proceedings are pending in the Senate
22 shall exercise any of the duties of the office unless the person
23 shall have been acquitted.

24 (f) If the Court of Judicial Discipline dismisses all
25 complaints against a justice, judge or district justice, the
26 court of Judicial Discipline shall, on application, enter an
27 order that the justice, judge or district justice be reimbursed
28 by the Commonwealth for reasonable counsel fees and costs.

29 § 21. Review of Court of Judicial Discipline.

30 (a) A justice, judge or district justice shall have the

1 right to appeal a final adverse order of discipline of the Court
2 of Judicial Discipline. A judge or district justice shall have
3 the right to appeal to the Supreme Court in a manner consistent
4 with the rules of the Supreme Court; a justice shall have the
5 right to appeal, in a manner consistent with the rules of the
6 Supreme Court, to a special tribunal composed of seven judges,
7 other than senior judges, chosen by lot from the judges of the
8 Superior Court and Commonwealth Court. The special tribunal
9 shall hear and decide the appeal in the same manner in which the
10 Supreme Court would hear and decide an appeal from an order of
11 the Court of Judicial Discipline.

12 (b) On appeal, the reviewing court or special tribunal shall
13 review the record of the Court of Judicial Discipline's
14 proceedings as follows: on the law, the scope of review is
15 plenary; on the facts, the scope of review is clearly erroneous;
16 and as to sanctions, the scope of review is abuse of discretion.
17 The introduction of additional evidence may be permitted by the
18 reviewing court or special tribunal.

19 (c) An order of the Court of Judicial Discipline dismissing
20 a complaint against a judge or district justice may be appealed
21 by the Judicial Conduct Board to the Supreme Court but the
22 appeal shall be limited to questions of law. An order of the
23 Court of Judicial Discipline dismissing a complaint against a
24 justice of the Supreme Court may be appealed by the Judicial
25 Conduct Board to a special tribunal composed of seven judges,
26 not senior judges, chosen by lot from the judges of the Superior
27 Court and Commonwealth Courts, but the appeal shall be limited
28 to questions of law.

29 (d) The reviewing court may, on application, enter an order
30 that the justice, judge or district justice be reimbursed by the

1 Commonwealth for reasonable counsel fees and costs.

2 (e) No justice, judge or district justice shall participate
3 as a member of the Judicial Conduct Board, the Court of Judicial
4 Discipline, a special review panel or the Supreme Court in any
5 proceeding involving his or her suspension, removal, discipline
6 or compulsory retirement.

7 (3) That section 24 of the schedule to Article V be amended
8 to read:

9 [§ 24. Judicial Inquiry and Review Board.

10 The selection of the first members of the Judicial Inquiry
11 and Review Board shall be made as follows: one judge of the
12 Superior Court, one non-judge member of the bar of the Supreme
13 Court, and one non-lawyer member shall be selected for two-year
14 terms; one judge of the Superior Court, one non-judge member of
15 the bar of the Supreme Court, and one non-lawyer member shall be
16 selected for four-year terms; one judge of the court of common
17 pleas shall be selected for a term of two years, one for a term
18 of three years, and one for a term of four years.]

19 § 24. Judicial Conduct Board.

20 (a) The members of the Judicial Inquiry and Review Board
21 shall vacate their offices 120 days after the adoption of the
22 amendment of section 18 of Article V, and all proceedings
23 pending before the judicial inquiry and review board and all
24 records shall be transferred to the judicial conduct board for
25 further proceedings.

26 (b) Of the members initially appointed to the Judicial
27 Conduct Board, the Appellate Court Judge and the common pleas
28 court judge shall be appointed to serve four-year terms. The
29 district justice first appointed shall serve a three-year term.
30 Of the three non-judge members of the bar of the Supreme Court

1 first appointed, the first appointed shall serve a three-year
2 term, the next appointed shall serve a two-year term and the
3 third appointed shall serve a one-year term. Of the six non-
4 lawyer electors first appointed, the first appointed shall serve
5 a four-year term, the next appointed shall serve a three-year
6 term, the next two appointed shall serve a two-year term and the
7 next two appointed shall serve a one-year term.

8 (4) That the schedule to Article V be amended by adding a
9 section to read:

10 § 24.1. Court of Judicial Discipline.

11 Of the members initially appointed to the Court of Judicial
12 Discipline, the three judges shall be appointed for terms of
13 four years, the two non-lawyer electors shall be appointed for
14 terms of three years and the law-trained district justice and
15 member of the bar of the Supreme Court shall be appointed for
16 terms of two years.