
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1

Session of
1993

INTRODUCED BY DeWEESE, CALTAGIRONE, KUKOVICH, VAN HORNE,
GODSHALL, ROBINSON, DERMODY, CARONE, CLARK, BUXTON, BATTISTO,
FAIRCHILD, HERMAN, MELIO, MICOZZIE, MIHALICH, NICKOL, PESCI,
PETRARCA, CESSAR, PITTS, RYAN, LLOYD, FREEMAN, CAPPABIANCA,
McNALLY, HALUSKA, TRICH, RUDY, FLICK, D. R. WRIGHT, REBER,
CORRIGAN, CURRY, STRITTMATTER, SCHULER, YEWIC, PLATTS,
GORDNER, ZUG, TRUE, ARMSTRONG, ROBERTS, FEE, GEORGE, TIGUE,
JAROLIN, KASUNIC, HANNA, DURHAM, STISH, MANDERINO, BEBKO-
JONES, LEDERER, COY, STEIGHNER, COLAFELLA, SURRA, DeLUCA,
GIGLIOTTI, STURLA, COWELL, TANGRETTI, LAUGHLIN, COLAIZZO,
STETLER, RITTER, STABACK, KIRKLAND, PETRONE, ROEBUCK,
SANTONI, PISTELLA, MICHLOVIC, ROONEY, RICHARDSON, JAMES,
BARLEY, BIRMELIN, GEIST, KENNEY, MARKOSEK AND BLAUM,
JANUARY 25, 1993

REFERRED TO COMMITTEE ON RULES, JANUARY 25, 1993

A JOINT RESOLUTION

1 Proposing amendments to the Constitution of the Commonwealth of
2 Pennsylvania, changing provisions relating to judicial
3 discipline.

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

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

8 (1) That sections 16 and 18 of Article V be amended to read:

9 § 16. Compensation and retirement of justices, judges and
10 justices of the peace.

11 (a) Justices, judges and justices of the peace shall be
12 compensated by the Commonwealth as provided by law. Their

1 compensation shall not be diminished during their terms of
2 office, unless by law applying generally to all salaried
3 officers of the Commonwealth.

4 (b) Justices, judges and justices of the peace shall be
5 retired upon attaining the age of 70 years. Former and retired
6 justices, judges and justices of the peace shall receive such
7 compensation as shall be provided by law. [No compensation shall
8 be paid to any justice, judge or justice of the peace who is
9 suspended or removed from office under section 18 of this
10 article or under Article VI.] Except as provided by law, no
11 salary, retirement benefit or other compensation, present or
12 deferred, shall be paid to any justice, judge or justice of the
13 peace, who under section 18 or under Article VI, is suspended,
14 removed or barred from holding judicial office for conviction of
15 a felony or misconduct in office or conduct which prejudices the
16 proper administration of justice or brings the judicial office
17 into disrepute.

18 (c) A former or retired justice or judge may, with his
19 consent, be assigned by the Supreme Court on temporary judicial
20 service as may be prescribed by rule of the Supreme Court.

21 [§ 18. Suspension, removal, discipline and compulsory
22 retirement.

23 (a) There shall be a Judicial Inquiry and Review Board
24 having nine members as follows: three judges of the courts of
25 common pleas from different judicial districts and two judges of
26 the Superior Court, all of whom shall be selected by the Supreme
27 Court; and two non-judge members of the bar of the Supreme Court
28 and two non-lawyer electors, all of whom shall be selected by
29 the Governor.

30 (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. Suspension, removal, discipline and other sanctions.

16 (a) There shall be an independent board within the judicial
17 branch, known as the Judicial Conduct Board, the composition,
18 powers and duties of which shall be as follows:

19 (1) The board shall be composed of 12 members, as follows:
20 two judges, other than senior judges, one from the courts of
21 common pleas and the other from either the Superior Court or the
22 Commonwealth Court; one justice of the peace, who need not be a
23 member of the bar of the Supreme Court; three non-judge members
24 of the bar of the Supreme Court; and six non-lawyer electors.

25 (2) The judge from either the Superior Court or the
26 Commonwealth Court, the justice of the peace, one non-judge
27 member of the bar of the Supreme Court and three non-lawyer
28 electors shall be appointed to the board by the Supreme Court.
29 The judge from the courts of common pleas, two non-judge members
30 of the bar of the Supreme Court and three non-lawyer electors

1 shall be appointed to the board by the Governor.

2 (3) Except for the initial appointees, whose terms shall be
3 provided by the schedule to this article, the members shall
4 serve for terms of four years. All members must be residents of
5 this Commonwealth. No more than three of the six members
6 appointed by the Supreme Court may be registered in the same
7 political party. No more than three of the six members appointed
8 by the Governor may be registered in the same political party.
9 Membership of a judge or justice of the peace shall terminate if
10 the member ceases to hold the judicial position that qualified
11 the member for the appointment. Membership shall terminate if a
12 member attains a position that would have rendered the member
13 ineligible for appointment at the time of the appointment. A
14 vacancy shall be filled by the respective appointing authority
15 for the remainder of the term to which the member was appointed.
16 No member may serve more than four consecutive years but may be
17 reappointed after a lapse of one year. The Governor shall
18 convene the board for its first meeting. At that meeting, and
19 annually thereafter, the members of the board shall elect a
20 chairperson. The board shall act only with the concurrence of a
21 majority of its members.

22 (4) No member of the board, during the member's term, may
23 hold office in a political party or political organization.
24 Except for a judicial member, no member of the board, during the
25 member's term may hold a compensated public office or public
26 appointment. All members shall be reimbursed for expenses
27 necessarily incurred in the discharge of their official duties.

28 (5) The board shall prescribe general rules governing the
29 conduct of members. A member may be removed by the board for a
30 violation of the rules governing the conduct of members.

1 (6) The board shall appoint a chief counsel and other staff,
2 prepare and administer its own budget as provided by law,
3 exercise supervisory and administrative authority over all board
4 staff and board functions, establish and promulgate its own
5 rules of procedure, prepare and disseminate an annual report and
6 take other actions as are necessary to ensure its efficient
7 operation. The budget request of the board shall be made by the
8 board as a separate item in the request submitted by the Supreme
9 Court on behalf of the Judicial Branch to the General Assembly.

10 (7) The board shall receive and investigate complaints
11 regarding judicial conduct filed by individuals or initiated by
12 the board; issue subpoenas to compel testimony under oath of
13 witnesses, including the subject of the investigation, and to
14 compel the production of documents, books, accounts and other
15 records relevant to the investigation; determine whether there
16 is probable cause to file formal charges against a justice,
17 judge or justice of the peace for conduct proscribed by this
18 section; and present the case in support of the charges before
19 the Court of Judicial Discipline.

20 (8) Complaints filed with the board or initiated by the
21 board shall not be public information. Statements, testimony,
22 documents, records or other information or evidence acquired by
23 the board in the conduct of an investigation shall not be public
24 information. A justice, judge or justice of the peace who is the
25 subject of a complaint filed with the board or initiated by the
26 board, or of an investigation conducted by the board, shall be
27 apprised of the nature and content of the complaint and afforded
28 an opportunity to respond fully to the complaint prior to any
29 probable cause determination by the board. All proceedings of
30 the board shall be confidential except when the subject of the

1 investigation waives confidentiality. If, independent of any
2 action by the board, the fact that an investigation by the board
3 is in progress becomes a matter of public record, the board may,
4 at the direction of the subject of the investigation, issue a
5 statement to confirm that the investigation is in progress, to
6 clarify the procedural aspects of the proceedings, to explain
7 the rights of the subject of the investigation to a fair hearing
8 without prejudice, or to provide the response of the subject
9 of the investigation to the complaint. In acting to dismiss a
10 complaint for lack of probable cause to file formal charges, the
11 board may, at its discretion, issue a statement or report to the
12 complainant or to the subject of the complaint, which may
13 contain the identity of the complainant, the identity of the
14 subject of the complaint, the contents and nature of the
15 complaint, the actions taken in the conduct of the investigation
16 and the results and conclusions of the investigation. The board
17 may include with a report a copy of information or evidence
18 acquired in the course of the investigation.

19 (9) If the board finds probable cause to file formal charges
20 concerning mental or physical disability against a justice,
21 judge or justice of the peace, the board shall so notify the
22 subject of the charges, and provide the subject with an
23 opportunity to resign from judicial office or, when appropriate,
24 to enter a rehabilitation program prior to the filing of the
25 formal charges with the Court of Judicial Discipline.

26 (10) Members of the board and its chief counsel and staff
27 shall be absolutely immune from suit for all conduct in the
28 course of their official duties. No civil action or disciplinary
29 complaint predicated upon the filing of a complaint or other
30 documents with the board or testimony before the board may be

1 maintained against any complainant, witness or counsel.

2 (b) There shall be a Court of Judicial Discipline, the
3 composition, powers and duties of which shall be as follows:

4 (1) The court shall be composed of a total of eight members
5 as follows: three judges other than senior judges from the
6 courts of common pleas, the Superior Court or the Commonwealth
7 Court; one justice of the peace; two non-judge members of the
8 bar of the Supreme Court; and two non-lawyer electors. Two
9 judges, the justice of the peace and one non-lawyer elector
10 shall be appointed to the court by the Supreme Court. One judge,
11 the two non-judge members of the bar of the Supreme Court and
12 one non-lawyer elector shall be appointed to the court by the
13 Governor.

14 (2) Except for the initial appointees, whose terms shall be
15 provided by the schedule to this article, each member shall
16 serve for a term of four years; however, the member, rather than
17 the member's successor, shall continue to participate in any
18 hearing in progress at the end of the member's term. All members
19 must be residents of this Commonwealth. No more than two of the
20 members appointed by the Supreme Court may be registered in the
21 same political party. No more than two of the members appointed
22 by the Governor may be registered in the same political party.
23 Membership of a judge or justice of the peace shall terminate if
24 the judge or justice of the peace ceases to hold the judicial
25 position that qualified the judge or justice of the peace for
26 appointment. Membership shall terminate if a member attains a
27 position that would have rendered that person ineligible for
28 appointment at the time of the appointment. A vacancy on the
29 court shall be filled by the respective appointing authority for
30 the remainder of the term to which the member was appointed in

1 the same manner in which the original appointment occurred. No
2 member of the court may serve more than four consecutive years
3 but may be reappointed after a lapse of one year.

4 (3) The court shall prescribe general rules governing the
5 conduct of members. A member may be removed by the court for a
6 violation of the rules of conduct prescribed by the court. No
7 member, during the member's term of service, may hold office in
8 any political party or political organization. Except for a
9 judicial member, no member of the court, during the member's
10 term of service, may hold a compensated public office or public
11 appointment. All members of the court shall be reimbursed for
12 expenses necessarily incurred in the discharge of their official
13 duties.

14 (4) The court shall appoint staff and prepare and administer
15 its own budget as provided by law and undertake actions needed
16 to ensure its efficient operation. All actions of the court,
17 including disciplinary action, shall require approval by a
18 majority vote of the members of the court. The budget request of
19 the court shall be made as a separate item in the request by the
20 Supreme Court on behalf of the Judicial Branch to the General
21 Assembly. The court shall adopt rules to govern the conduct of
22 proceedings before the court.

23 (5) Upon the filing of formal charges with the court by the
24 board, the court shall promptly schedule a hearing or hearings
25 to determine whether a sanction should be imposed against a
26 justice, judge or justice of the peace pursuant to the
27 provisions of this section. The court shall be a court of
28 record, with all the attendant duties and powers appropriate to
29 its function. Formal charges filed with the court shall be a
30 matter of public record. All hearings conducted by the court

1 shall be public proceedings, conducted pursuant to the rules
2 adopted by the court and in accordance with the principles of
3 due process and the law of evidence. Parties appearing before
4 the court shall have a right to discovery pursuant to the rules
5 adopted by the court and shall have the right to subpoena
6 witnesses and to compel the production of documents, books,
7 accounts and other records as relevant. The subject of the
8 charges shall be presumed innocent in any proceeding before the
9 court, and the board shall have the burden of proving the
10 charges by clear and convincing evidence. All decisions of the
11 court shall be in writing and shall contain findings of fact and
12 conclusions of law. A decision of the court may order removal
13 from office, suspension, censure or other discipline as
14 authorized by this section and as warranted by the record.

15 (6) Members of the court and the court's staff shall be
16 absolutely immune from suit for all conduct in the course of
17 their official duties, and no civil action or disciplinary
18 complaint predicated on testimony before the court may be
19 maintained against any witness or counsel.

20 (c) Decisions of the court shall be subject to review as
21 follows:

22 (1) A justice, judge or justice of the peace shall have the
23 right to appeal a final adverse order of discipline of the
24 court. A judge or justice of the peace shall have the right to
25 appeal to the Supreme Court in a manner consistent with rules
26 adopted by the Supreme Court; a justice shall have the right to
27 appeal to a special tribunal composed of seven judges, other
28 than senior judges, chosen by lot from the judges of the
29 Superior Court and Commonwealth Court who do not sit on the
30 Court of Judicial Discipline or the board, in a manner

1 consistent with rules adopted by the Supreme Court. The special
2 tribunal shall hear and decide the appeal in the same manner in
3 which the Supreme Court would hear and decide an appeal from an
4 order of the court.

5 (2) On appeal, the Supreme Court or special tribunal shall
6 review the record of the proceedings of the court as follows: on
7 the law, the scope of review is plenary; on the facts, the scope
8 of review is clearly erroneous; and as to sanctions, the scope
9 of review is whether the sanctions imposed were lawful. The
10 Supreme Court or special tribunal may revise or reject an order
11 of the court upon a determination that the order did not sustain
12 this standard of review; otherwise, the Supreme Court or special
13 tribunal shall affirm the order of the court.

14 (3) An order of the court which dismisses a complaint
15 against a judge or justice of the peace may be appealed by the
16 board to the Supreme Court, but the appeal shall be limited to
17 questions of law. An order of the court which dismisses a
18 complaint against a justice of the Supreme Court may be appealed
19 by the board to a special tribunal in accordance with paragraph
20 (1), but the appeal shall be limited to questions of law.

21 (4) No justice, judge or justice of the peace may
22 participate as a member of the board, the court, a special
23 tribunal, or the Supreme Court in any proceeding in which the
24 justice, judge or justice of the peace is a complainant, the
25 subject of a complaint, a party or a witness.

26 (d) A justice, judge or justice of the peace shall be
27 subject to disciplinary action pursuant to this section as
28 follows:

29 (1) A justice, judge or justice of the peace may be
30 suspended, removed from office or otherwise disciplined for

1 conviction of a felony; violation of section 17 of this article;
2 misconduct in office; neglect or failure to perform the duties
3 of office or conduct which prejudices the proper administration
4 of justice or brings the judicial office into disrepute, whether
5 or not the conduct occurred while acting in a judicial capacity
6 or is prohibited by law; or conduct in violation of a canon or
7 rule prescribed by the Supreme Court. In the case of a mentally
8 or physically disabled justice, judge or justice of the peace,
9 the court may enter an order of removal from office, retirement,
10 suspension or other limitations on the activities of the
11 justice, judge or justice of the peace as warranted by the
12 record. Upon a final order of the court for suspension without
13 pay or removal, prior to any appeal, the justice, judge or
14 justice of the peace shall be suspended or removed from office;
15 and the salary of the justice, judge or justice of the peace
16 shall cease from the date of the order.

17 (2) Prior to a hearing, the court may issue an interim order
18 directing the suspension, with or without pay, of any justice,
19 judge or justice of the peace against whom formal charges have
20 been filed with the court by the board or against whom has been
21 filed an indictment or information charging a felony. An interim
22 order under this paragraph shall not be considered a final order
23 from which an appeal may be taken.

24 (3) A justice, judge or justice of the peace convicted of
25 misbehavior in office by a court, disbarred as a member of the
26 bar of the Supreme Court or removed under this section shall
27 forfeit automatically his judicial office and thereafter be
28 ineligible for judicial office.

29 (4) A justice, judge or justice of the peace who files for
30 nomination for or election to any public office other than a

1 judicial office shall forfeit automatically his judicial office.

2 (5) This section is in addition to and not in substitution
3 for the provisions for impeachment for misbehavior in office
4 contained in Article VI. No justice, judge or justice of the
5 peace against whom impeachment proceedings are pending in the
6 Senate shall exercise any of the duties of office until
7 acquittal.

8 (2) That section 24 of the Schedule to Article V be amended
9 to read:

10 § 24. Judicial [Inquiry and Review Board] Discipline.

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

20 (a) The members of the Judicial Inquiry and Review Board
21 shall vacate their offices 90 days after the adoption of the
22 amendment to 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 judge appointed by the Supreme Court shall
28 serve a four-year term; and the judge appointed by the Governor
29 shall serve a three-year term. The justice of the peace
30 initially appointed shall serve a two-year term. Of the three

1 non-judge members of the bar of the Supreme Court initially
2 appointed: the first appointed by the Governor shall serve a
3 three-year term; the next appointed by the Governor shall serve
4 a two-year term; and the non-judge member of the bar of the
5 Supreme Court appointed by the Supreme Court shall serve a one-
6 year term. Of the six non-lawyer electors initially appointed:
7 the first appointed by the Governor and the first appointed by
8 the Supreme Court shall serve a four-year term; the next
9 appointed by the Governor and the next appointed by the Supreme
10 Court shall serve a three-year term; and the next appointed by
11 the Governor and the next appointed by the Supreme Court shall
12 serve a two-year term.

13 (c) Of the three judges initially appointed to the Court of
14 Judicial Discipline: the first appointed by the Supreme Court
15 shall serve a four-year term; the next appointed by the Supreme
16 Court shall serve a three-year term; and the judge appointed by
17 the Governor shall serve a two-year term. The justice of the
18 peace initially appointed shall serve a one-year term. Of the
19 non-judge members of the bar initially appointed: the first
20 appointed shall serve a four-year term; and the next appointed
21 shall serve a three-year term. Of the two non-lawyer electors
22 initially appointed: the non-lawyer elector appointed by the
23 Governor shall serve a three-year term, and the non-lawyer
24 elector appointed by the Supreme Court shall serve a two-year
25 term.

26 Section 2. Upon passage by the General Assembly of these
27 proposed constitutional amendments, the Secretary of the
28 Commonwealth shall proceed immediately to comply with the
29 advertising requirements of section 1 of Article XI of the
30 Constitution of Pennsylvania and shall transmit the required

1 advertisements to two newspapers in every county in which such
2 newspapers shall be published in sufficient time after passage
3 of these proposed constitutional amendments. Upon the second
4 passage of these proposed constitutional amendments by the
5 General Assembly, the Secretary of the Commonwealth shall
6 proceed immediately to comply with the advertising requirements
7 of section 1 of Article XI of the Constitution of Pennsylvania
8 and shall transmit the required advertisements to two newspapers
9 in every county in which such newspapers shall be published in
10 sufficient time after passage of these proposed constitutional
11 amendments. The Secretary of the Commonwealth shall submit these
12 proposed constitutional amendments to the qualified electors of
13 this Commonwealth at the first primary, general or municipal
14 election occurring at least three months after the proposed
15 constitutional amendments are passed by the General Assembly
16 which meets the requirements of and is in conformance with
17 section 1 of Article XI of the Constitution of Pennsylvania.