

(This Joint Resolution No.1 was passed for the second time at the Legislative Session of 1991.)

No. 1991-1

A JOINT RESOLUTION

HB 1

Proposing amendments to the Constitution of the Commonwealth of Pennsylvania, changing provisions relating to judicial discipline; and providing for financial disclosure, for budgeting and for the financial affairs of the judiciary.

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

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

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

§ 17. Prohibited activities *and financial disclosure*.

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

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

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

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

*(e) The Supreme Court shall promulgate financial disclosure requirements for all justices, judges, justices of the peace and other officers or employees of the unified judicial system which shall provide for no less disclosure than provided by law for members of the General Assembly. In addition, such disclosure shall include that information deemed necessary for the fair and impartial administration of justice. These requirements shall prohibit any justice, judge, justice of the peace or other officer or employee of the system from taking the oath of office or entering or continuing upon his or her duties or receiving compensation from public funds unless he or she has complied with such financial disclosure requirements.*

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

**[§ 18. Suspension, removal, discipline and compulsory retirement.**

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

**§ 18. Judicial Conduct Board.**

**(a) There shall be a Judicial Conduct Board within the executive branch, which shall be composed of a total of 11 members as follows: one active judge of the court of common pleas appointed by the Supreme Court; one active judge of an appellate court appointed by the Supreme Court; one active justice of the peace appointed by the Supreme Court; two non-judge members of the bar of the Supreme Court appointed by the Governor; and six non-lawyer electors appointed by the Governor. All members of the Judicial Conduct Board shall be appointed by the respective appointing authority, with the advice and consent of a majority of the members elected to the Senate in the manner provided in section 8 of Article IV of this Constitution.**

**(b) [The] Except for the initial appointees whose terms shall be provided by the schedule to this amendment, the members shall serve for terms of four years, provided that a member, rather than his or her successor, shall continue to participate in any hearing in progress at the end of [his term.] this term. All members shall be residents of this Commonwealth, and no more than six of the 11 members shall be registered in the same political party. Judicial Conduct Board membership by a judge shall terminate if the member ceases to hold the judicial position that qualified him or her for the appointment. Membership shall also terminate if a member attains a position that would have rendered him or her ineligible for appointment at the time of the appointment. A vacancy on the board shall be filled by the respective appointing authority for the balance of the term. The [respective appointing authority may remove a] Governor may remove any member only for cause. No member shall serve more than four consecutive years[; he] but may be reappointed after a lapse of one year. [Annually] The Governor shall convene the board for its first meeting, and, at that meeting and annually thereafter, the members of the board shall elect a chairman. The board shall act only with the concurrence of a majority of its members.**

**(c) [A member shall not] No member of the Judicial Conduct Board, during his or her term of service, shall hold office in a political party or political organization. [Members, other than judges, shall be compensated for their services as the Supreme Court shall prescribe.] Except for a judicial member, no member of the Judicial Conduct Board, during his or her term of service, shall hold a public office or public appointment, compensated or uncompensated. All members shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.**

**[(d) Under the procedure prescribed herein, any justice or judge may be suspended, removed from office or otherwise disciplined for violation of**

section 17 of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, and may be retired for disability seriously interfering with the performance of his duties.

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

(f) The board, after such investigation, may order a hearing concerning the suspension, removal, discipline or compulsory retirement of a justice or judge. The board's orders for attendance of or testimony by witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings.

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

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

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

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

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

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

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

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

*(d) The Judicial Conduct Board shall receive and investigate complaints regarding judicial conduct filed by individuals or initiated by Judicial Conduct Board; promulgate rules for determining whether a complaint is reasonably based; issue subpoenas to compel testimony under oath of witnesses, including the subject of the investigation, and to compel the production of documents, books, accounts and other records relevant to the investigation; determine whether there is probable cause to file formal charges against a justice, judge or justice of the peace, for conduct proscribed in sections 17 and 20(a) of this article, a finding of which shall require approval by a majority vote of the Judicial Conduct Board; and present the case in support of the charges.*

*(e) The Judicial Conduct Board, by a majority vote, shall appoint a chief counsel and other staff; prepare and administer its own budget as provided by law; and establish and promulgate its own rules of procedure. The budget request of the Judicial Conduct Board shall be made separately to the General Assembly.*

*(f) The justice, judge or justice of the peace whose conduct is the subject of an investigation by the Judicial Conduct Board shall be given an opportunity to fully respond to the complaint and shall be afforded full discovery.*

*(g) Until a determination of probable cause has been made and formal charges have been filed, all proceedings shall be confidential except when the justice, judge or justice of the peace under investigation waives confidentiality, or in any case in which, independent of any action by the Judicial Conduct Board, the fact that an investigation is in process becomes public, in which case the Judicial Conduct Board may, at the direction of the justice, judge or justice of the peace under investigation, issue a statement to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the justice, judge or justice of the peace to a fair hearing without prejudgment, or to state that the justice, judge or justice of the peace denies the allegations.*

*(h) If on a complaint of mental or physical disability the Judicial Conduct Board finds probable cause to file formal charges against a justice, judge or justice of the peace, the board shall present its findings to the justice, judge or justice of the peace and provide him with the opportunity to resign or, when appropriate, to enter a rehabilitation program before the filing of formal charges.*

*(i) Members of the Judicial Conduct Board and its chief counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties. A complaint submitted to the Judicial Conduct Board or testimony related to the complaint shall be privileged, and no civil action or disciplinary complaint predicated on the complaint or testimony shall be maintained against any complainant or witness or his or her counsel.*

(3) 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: one active judge of the court of common pleas; one active judge of an appellate*

*court; one active justice of the peace; one non-judge member of the bar of the Supreme Court; and three non-lawyer electors. Members of the Court of Judicial Discipline shall be appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate in the manner provided in section 8 of Article IV of this Constitution.*

*(b) Except for the initial appointees whose terms shall be provided by the schedule to this article, the members shall serve for terms of four years, provided that a member, rather than his or her successor, shall continue to participate in any hearing in progress at the end of this term. All members shall be residents of this Commonwealth, and no more than four of the seven members shall be registered in the same political party. Court of Judicial Discipline membership by a judge shall terminate if the judge ceases to hold the judicial position that qualified him for Court of Judicial Discipline appointment. Court of Judicial Discipline membership shall also terminate if a member attains a position that would have rendered him or her ineligible for appointment at the time of the appointment. A vacancy on the Court of Judicial Discipline shall be filled by the Governor for the balance of the term. The Governor may remove any member only for cause. No member of the Court of Judicial Discipline shall serve more than four consecutive years but may be reappointed after a lapse of one year.*

*(c) No member of the Court of Judicial Discipline, during his or her term of service, shall hold office in any political party or political organization. Except for a judicial member, no member of the Court of Judicial Discipline, during his or her term of service, shall hold a public office or public appointment, compensated or uncompensated. All members shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.*

*(d) The Court of Judicial Discipline shall be a court of record with all the attendant duties and powers appropriate to its function, and shall hold public proceedings, conducted consistent with the principles of due process and the law of evidence; enable parties appearing before it to subpoena witnesses and to compel the production of documents, books, accounts and other records as relevant; render its decision in writing, each decision to include its finding of fact, conclusions of law and discussion of reasons; have its proceedings transcribed; order removal from office, suspension, censure or other discipline as authorized by section 20 of this article and as warranted by the record; appoint staff and prepare and administer its own budget as provided by law. All actions of the Court of Judicial Discipline, including disciplinary action, shall require approval by a majority vote of the Court. The budget request of the Court of Judicial Discipline shall be made separately to the General Assembly, and not as an item in the request by the Supreme Court on behalf of the judicial system.*

*(e) Upon the filing of formal charges by the Judicial Conduct Board, the Court of Judicial Discipline shall schedule a prompt hearing to determine whether a sanction pursuant to the provisions of section 20 should be imposed. The Court of Judicial Discipline shall afford the justice, judge or justice of the peace full discovery and a fair opportunity to prepare for the*

*hearing. The Judicial Conduct Board shall have the burden of proving the conduct complained of by clear and convincing evidence.*

*(f) Members of the Court of Judicial Discipline and the Court's staff shall be absolutely immune from suit from all conduct in the course of their official duties and no civil action or disciplinary complaint predicated on testimony before the Court of Judicial Discipline shall be maintained against any witness or his or her counsel.*

**§ 20. Proscribed conduct and sanctions.**

*(a) Under the procedures prescribed herein, any justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for violation of section 17 of this article, misconduct in office, neglect or failure to perform the duties of office, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not such conduct occurred while acting in a judicial capacity or is prohibited by law, and for conduct in violation of a canon or rule prescribed by the Supreme Court.*

*(b) The Court of Judicial Discipline shall, until there is an acquittal or conviction for the felony offense, order suspended without pay any justice, judge or justice of the peace against whom there has been filed an indictment or information charging a felony. An interim order of suspension, with or without pay, may be entered against a justice, judge or justice of the peace against whom formal charges have been filed with the Court of Judicial Discipline by the Judicial Conduct Board. Such order shall not be immediately appealable.*

*(c) In the case of a mentally or physically disabled justice, judge or justice of the peace, the Court of Judicial Discipline may enter an order of removal from office, retirement, suspension or other limitations on the activities of the justice, judge or justice of the peace as warranted by the record.*

*(d) The Court of Judicial Discipline may order suspended, with or without pay, any justice, judge or justice of the peace after a determination that the continued service of the justice, judge or justice of the peace poses a substantial or imminent threat to the fair and impartial administration of justice.*

*(e) Upon an order of the Court of Judicial Discipline for suspension without pay or removal, the justice or judge shall be suspended or removed from office, and his salary shall cease from the date of such order.*

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

*(g) A justice, judge or justice of the peace who files for nomination for or election to any public office other than a judicial office shall forfeit automatically his judicial office.*

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

**§ 21. Review of Court of Judicial Discipline.**

(a) *A justice, judge or justice of the peace, other than a justice of the Supreme Court, in a manner consistent with the rules of the Supreme Court, may appeal to the Supreme Court a final adverse order of the Court of Judicial Discipline. The Supreme Court shall not review the record de novo, but rather as it would review the record in a civil action in which the moving party in the lower court had the burden of proving its allegations by clear and convincing evidence. The Supreme Court may revise or reject the order of the Court of Judicial Discipline upon a determination the order did not sustain this standard of review; otherwise the Supreme Court shall affirm the order of the Court of Judicial Discipline.*

(b) *A justice of the Supreme Court, in a manner consistent with the rules of the Supreme Court, may appeal a final adverse order of the Court of Judicial Discipline to a special review panel consisting of seven judges to be chosen by lot from the judges of the Superior Court and the Commonwealth Court, other than senior judges, and who do not themselves sit on the Court of Judicial Discipline. The appeal shall in all other respects conform with the requirements of this section.*

(c) *No justice, judge or justice of the peace shall participate as a member of the Judicial Conduct Board, the Court of Judicial Discipline, a special review panel or the Supreme Court in any proceeding involving his or her suspension, removal, discipline or compulsory retirement.*

(4) That Article V be amended by adding a section to read:

**§ 22. Financial affairs and budgets.**

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

(b) *The General Assembly shall include such operating budget appropriations for the Supreme Court, Superior Court, Commonwealth Court, Court Administrator of Pennsylvania and other statewide agencies, committees and statewide units of the unified judicial system as the General Assembly shall determine to be necessary and reasonable in the general appropriation bill or such separate appropriation bill as it deems appropriate. No moneys shall be paid out of the State Treasury for the operation of the unified judicial system except pursuant to an appropriation approved by the General Assembly and upon warrant issued by the proper officer.*

(c) *All fees, charges and other moneys received by the Supreme Court, Superior Court, Commonwealth Court or other statewide agency, committee or statewide unit of the unified judicial system, with the exception of payments mandated to a party by court order and fees assessed by the Supreme Court and paid to the Disciplinary Board of the Supreme Court or for a client security fund, shall be deposited in the State Treasury for appropriation by the General Assembly for the operations of the unified judicial system.*

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

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

(b) Of the members initially appointed to the Judicial Conduct Board, the appellate court judge and the common pleas court judge shall be appointed to serve four-year terms. The justice of the peace first appointed shall serve a three-year term. The non-judge member of the bar of the Supreme Court first appointed by the Governor shall serve a three-year term and the second non-judge member shall serve a two-year term. Of the non-lawyer electors appointed by the Governor, the first two appointed shall serve four-year terms; the next one appointed shall serve a three-year term; and the final three appointed shall serve two-year terms.

(c) Of the members initially appointed to the Court of Judicial Discipline, the Governor shall appoint three members for terms of four years, two members for terms of three years and two members for terms of two years.

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

*Note.* On April 1, 1991, Commonwealth Court issued an injunction preliminarily enjoining the placement on the ballot of the questions contained in Joint Resolution 1 until further order of the court providing otherwise. No further order was issued as of the time of this publication.