

(This Joint Resolution No.1 was passed for the first time at the Legislative Session of 1992 and for the second time at the Legislative Session of 1993 and was approved by the electorate May 18, 1993.)

No. 1993-1

## A JOINT RESOLUTION

HB 1

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

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 sections 16 and 18 of Article V be amended to read:

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

(a) Justices, judges and justices of the peace shall be compensated by the Commonwealth as provided by law. Their compensation shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth.

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

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

**[§ 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.

(b) The members shall serve for terms of four years, provided that a member, rather than his successor, shall continue to participate in any hearing in progress at the end of his term. 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 member only for cause. No member shall serve more than four consecutive years; he may be reappointed after a lapse of one year. Annually 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 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. 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.]

**§ 18. *Suspension, removal, discipline and other sanctions.***

*(a) There shall be an independent board within the Judicial Branch, known as the Judicial Conduct Board, the composition, powers and duties of which shall be as follows:*

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

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

*(3) 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. All members must be residents of this Commonwealth. No more than three of the six members appointed by the Supreme Court may be registered in the same political party. No more than three of the six members appointed by the Governor may be registered in the same political party. Membership of a judge or justice of the peace shall terminate if the member ceases to*

*hold the judicial position that qualified the member for the appointment. Membership shall terminate if a member attains a position that would have rendered the member ineligible for appointment at the time of the appointment. A vacancy shall be filled by the respective appointing authority for the remainder of the term to which the member was appointed. No member may serve more than four consecutive years but may be reappointed after a lapse of one year. The Governor shall convene the board for its first meeting. At that meeting and annually thereafter, the members of the board shall elect a chairperson. The board shall act only with the concurrence of a majority of its members.*

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

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

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

*(7) The board shall receive and investigate complaints regarding judicial conduct filed by individuals or initiated by the board; 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 by this section; and present the case in support of the charges before the Court of Judicial Discipline.*

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

*confidentiality. If, independent of any action by the board, the fact that an investigation by the board is in progress becomes a matter of public record, the board may, at the direction of the subject of the investigation, issue a statement to confirm that the investigation is in progress, to clarify the procedural aspects of the proceedings, to explain the rights of the subject of the investigation to a fair hearing without prejudgment or to provide the response of the subject of the investigation to the complaint. In acting to dismiss a complaint for lack of probable cause to file formal charges, the board may, at its discretion, issue a statement or report to the complainant or to the subject of the complaint, which may contain the identity of the complainant, the identity of the subject of the complaint, the contents and nature of the complaint, the actions taken in the conduct of the investigation and the results and conclusions of the investigation. The board may include with a report a copy of information or evidence acquired in the course of the investigation.*

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

*(10) Members of the board and its chief counsel and staff shall be absolutely immune from suit for all conduct in the course of their official duties. No civil action or disciplinary complaint predicated upon the filing of a complaint or other documents with the board or testimony before the board may be maintained against any complainant, witness or counsel.*

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

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

*(2) 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; however, the member, rather than the member's successor, shall continue to participate in any hearing in progress at the end of the member's term. All members must be residents of this Commonwealth. No more than two of the members appointed by the Supreme Court may be registered in the same political party. No more than two of the members appointed by the Governor may be registered in the same political party. Membership of a judge or justice of the peace shall terminate if the judge*

*or justice of the peace ceases to hold the judicial position that qualified the judge or justice of the peace for appointment. Membership shall terminate if a member attains a position that would have rendered that person ineligible for appointment at the time of the appointment. A vacancy on the court shall be filled by the respective appointing authority for the remainder of the term to which the member was appointed in the same manner in which the original appointment occurred. No member of the court may serve more than four consecutive years but may be reappointed after a lapse of one year.*

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

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

*(5) Upon the filing of formal charges with the court by the board, the court shall promptly schedule a hearing or hearings to determine whether a sanction should be imposed against a justice, judge or justice of the peace pursuant to the provisions of this section. The court shall be a court of record, with all the attendant duties and powers appropriate to its function. Formal charges filed with the court shall be a matter of public record. All hearings conducted by the court shall be public proceedings conducted pursuant to the rules adopted by the court and in accordance with the principles of due process and the law of evidence. Parties appearing before the court shall have a right to discovery pursuant to the rules adopted by the court and shall have the right to subpoena witnesses and to compel the production of documents, books, accounts and other records as relevant. The subject of the charges shall be presumed innocent in any proceeding before the court, and the board shall have the burden of proving the charges by clear and convincing evidence. All decisions of the court shall be in writing and shall contain findings of fact and conclusions of law. A decision of the court may order removal from office, suspension, censure or other discipline as authorized by this section and as warranted by the record.*

*(6) Members of the court and the court's staff shall be absolutely*

*immune from suit for all conduct in the course of their official duties, and no civil action or disciplinary complaint predicated on testimony before the court may be maintained against any witness or counsel.*

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

*(1) A justice, judge or justice of the peace shall have the right to appeal a final adverse order of discipline of the court. A judge or justice of the peace shall have the right to appeal to the Supreme Court in a manner consistent with rules adopted by the Supreme Court; a justice shall have the right to appeal to a special tribunal composed of seven judges, other than senior judges, chosen by lot from the judges of the Superior Court and Commonwealth Court who do not sit on the Court of Judicial Discipline or the board, in a manner consistent with rules adopted by the Supreme Court. The special tribunal shall hear and decide the appeal in the same manner in which the Supreme Court would hear and decide an appeal from an order of the court.*

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

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

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

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

*(1) A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for conviction of a felony; 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 the conduct occurred while acting in a judicial capacity or is prohibited by law; or conduct in violation of a canon or rule prescribed by the Supreme Court. In the case of a mentally or physically disabled justice, judge or justice of the peace, the court 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. Upon a final order of the court for suspension without pay or removal, prior to any appeal, the justice, judge or justice of the peace shall be suspended or removed from office; and the salary of the justice, judge or justice of the peace shall cease from the date of the order.*

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

*(3) 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.*

*(4) 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.*

*(5) 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 office until acquittal.*

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

*§ 24. Judicial [Inquiry and Review Board] discipline.*

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

*(a) The members of the Judicial Inquiry and Review Board shall vacate their offices 90 days after the adoption of the amendment to section 18 of this article, and all proceedings pending before the Judicial Inquiry and Review Board and all records shall be transferred to the Judicial Conduct Board for further proceedings.*

*(b) Of the members initially appointed to the Judicial Conduct Board, the judge appointed by the Supreme Court shall serve a four-year term, and the judge appointed by the Governor shall serve a three-year term. The justice of the peace initially appointed shall serve a two-year term. Of the three non-judge members of the bar of the Supreme Court initially appointed, the first appointed by the Governor shall serve a three-year term, the next appointed by the Governor shall serve a two-year term, and the*

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*non-judge member of the bar of the Supreme Court appointed by the Supreme Court shall serve a one-year term. Of the six non-lawyer electors initially appointed, the first appointed by the Governor and the first appointed by the Supreme Court shall serve a four-year term, the next appointed by the Governor and the next appointed by the Supreme Court shall serve a three-year term, and the next appointed by the Governor and the next appointed by the Supreme Court shall serve a two-year term.*

*(c) Of the three judges initially appointed to the Court of Judicial Discipline, the first appointed by the Supreme Court shall serve a four-year term, the next appointed by the Supreme Court shall serve a three-year term, and the judge appointed by the Governor shall serve a two-year term. The justice of the peace initially appointed shall serve a one-year term. Of the non-judge members of the bar initially appointed, the first appointed shall serve a four-year term, and the next appointed shall serve a three-year term. Of the two non-lawyer electors initially appointed, the non-lawyer elector appointed by the Governor shall serve a three-year term, and the non-lawyer elector appointed by the Supreme Court shall serve a two-year term.*

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

