
Volume 98
Issue 3 *Dickinson Law Review - Volume 98,*
1993-1994

3-1-1994

Pennsylvania's Evolving Judicial Discipline System: The Development and Content of the 1993 Constitutional Amendments

Jonathan P. Nase

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Jonathan P. Nase, *Pennsylvania's Evolving Judicial Discipline System: The Development and Content of the 1993 Constitutional Amendments*, 98 DICK. L. REV. 429 (1994).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol98/iss3/5>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Pennsylvania's Evolving Judicial Discipline System: The Development and Content of the 1993 Constitutional Amendments

Jonathan P. Nase*

I. Introduction

Pennsylvania, like many other states, has several formal and informal methods of imposing disciplinary sanctions on judicial officers.¹ Informal methods include persuading an errant jurist to retire rather than face charges. Formal methods include impeachment² and automatic forfeiture of office.³

The 1968 Constitution created another formal method of imposing disciplinary sanctions: a judicial discipline commission system. Under the 1968 Constitution, the Judicial Inquiry and Review Board (JIRB) received and initiated complaints, conducted investigations,⁴ and held

*B.A., American University, 1982; J.D., Duke University, 1985. Counsel, Legislative Budget and Finance Committee, Pennsylvania General Assembly. The opinions expressed here are solely those of the author and do not represent the position of the Committee, its individual members, or its staff.

1. For a discussion of the various formal and informal methods that states frequently use to impose discipline on jurists, see RUSSELL R. WHEELER & A. LEO LEVIN, *JUDICIAL DISCIPLINE AND REMOVAL IN THE UNITED STATES* 7-9 (1979).

2. The governor and all other civil officers are liable for impeachment for any misbehavior in office. PA. CONST. art. VI, § 6. The House of Representatives has the sole power of impeachment and impeachment trials are held before the Senate. PA. CONST. art. VI, §§ 4-5.

Impeachment has rarely been used. "In all of Pennsylvania's long history there have been but three instances of legislative impeachment since Judge Francis Hopkinson was impeached in 1780. Hopkinson's impeachment was followed by the impeachment of Alexander Addison in 1803, three members of the Supreme Court in 1805, and finally the impeachment of Thomas Cooper in 1811." THE PREPATORY COMMITTEE TO THE PENNSYLVANIA CONSTITUTIONAL CONVENTION, THE JUDICIARY, REFERENCE MANUAL NUMBER 5, THE PENNSYLVANIA CONSTITUTIONAL CONVENTION 1967-68 60 (1967) [hereinafter REFERENCE MANUAL NO. 5] (note omitted). See also ROBERT E. WOODSIDE, *PENNSYLVANIA CONSTITUTIONAL LAW* 431 (1985).

3. The Pennsylvania Constitution provides: "[a]ll civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime." PA. CONST. art. VI, § 7.

In addition, the Pennsylvania Constitution formerly provided: "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." PA. CONST. art. V, § 18(1). This provision was repealed in 1993, but virtually identical language is now found at PA. CONST. art. V, § 18(d)(3). See *infra* notes 217-18 and accompanying text.

4. PA. CONST. art. V, § 18(e) (adopted 1968, repealed 1993).

hearings when necessary.⁵ The Board could close cases without disciplinary action, but could not impose disciplinary sanctions; if the Board found good cause to discipline a justice or judge, it made an appropriate recommendation to the Supreme Court.⁶ The Board could also recommend that a physically or mentally disabled justice or judge be retired.⁷ The Supreme Court reviewed each case *de novo* and could adopt, modify, or reject the JIRB's recommendation.⁸

The JIRB system seemed to work well at first and judicial discipline attracted little attention from the legislature. Judicial scandals and controversial decisions, however, created interest in the subject. By 1983, legislators were introducing bills to reform the JIRB system. While those bills did not pass, legislators, lobbyists, and others kept pressing for reform. Those efforts finally reached fruition in May 1993, when the voters approved constitutional amendments that changed Pennsylvania's judicial discipline commission system.

This article will examine the development and content of the 1993 constitutional amendments. Such an examination serves two important purposes: First, by summarizing (1) the relevant provisions of the 1968 Constitution, (2) the criticisms of that approach, and (3) the responses adopted in 1993, this article promotes understanding of the new constitutional provisions. Second, by describing the long and difficult road to reform, this article explores the politics of judicial reform in Pennsylvania.

Section II of this Article will describe the decade-long struggle for reform, and Section III will examine the result of that struggle. Finally, Section IV will offer a brief conclusion.

II. The Struggle for Reform: Legislation, Litigation and Election

Pennsylvanians may amend their constitution through a three-step process. First, the General Assembly must pass a bill and the Secretary of the Commonwealth must publish it in newspapers at least three months before an election. Second, the General Assembly must pass the same proposal during the next legislative session, and the Secretary of the Commonwealth again must publish it in newspapers at least three

5. PA. CONST. art. V, § 18(f) (adopted 1968, repealed 1993).

6. PA. CONST. art. V, § 18(g) (adopted 1968, repealed 1993). Throughout this Article the phrase "Supreme Court" and "Court" refer to the Pennsylvania Supreme Court, unless otherwise designated.

7. PA. CONST. art. V, § 18(d) (adopted 1968, repealed 1993).

8. PA. CONST. art. V, § 18(h) (adopted 1968, repealed 1993).

months prior to an election. Finally, the voters must approve the proposal at a primary, general, or municipal election.⁹

The drive to amend the constitution's judicial discipline provisions began in 1983. The General Assembly passed a reform measure in 1990 and 1991, but a court decision kept judicial discipline off the ballot.¹⁰ A new proposal sailed through the General Assembly in 1992 and 1993, and the voters approved it overwhelmingly in the May 1993 primary.

A. *The General Assembly: 1969-1982*

The JIRB system seemed to perform effectively at first, as the Board enjoyed a good reputation nationally as well as in Pennsylvania.¹¹ The Board handled few cases¹² and sparked comparatively little controversy. Consequently, the legislature showed little interest in judicial discipline.

One of the first incidents that attracted legislative interest in judicial discipline¹³ was a 1979 Pennsylvania Supreme Court decision: *Matter of Dalessandro*.¹⁴ This case involved a judge accused of several acts of misconduct, including breaking election laws and having an affair. The JIRB recommended public censure, but three members dissented on the grounds that the Board should have recommended removal. The Supreme Court rejected the Board's recommendation, deciding not to impose disciplinary sanctions.¹⁵

The Court disagreed with several of the Board's factual findings. Additionally, the Court held that the constitution and the Canons of Judicial Ethics only apply to (1) a judge's conduct in an official capacity; (2) other conduct that affects the judge while acting in an official capacity; and (3) conduct prohibited by law.¹⁶ This decision

9. PA. CONST. art. XI, § 1.

10. See *Kremer v. Grant*, 606 A.2d 433 (Pa. 1992).

11. Special Senate Committee on Judicial Conduct and Administration, *The Image of Justice* . . . 32 (1984) [hereinafter *Special Senate Committee Report*]. Nevertheless, even some of the early disciplinary decisions drew criticism. See Rhae L. Blynt, Comment, *Judicial Discipline — Does It Exist in Pennsylvania?* 84 DICK. L. REV. 447 (1980).

12. In the first years of its existence, the JIRB filed two or three sets of formal charges each year with the Supreme Court. In 1988, it filed 37 sets of formal charges. Fred Maher, *Judicial Disciplinary Changes Proposed*, PA. L.J.-REP., Nov. 21, 1988, at 1. See also WOODSIDE, *supra* note 2, at 436.

13. LEGIS. J. NO. 44-SENATE, 168th General Assembly, 1984 Sess. 2435 (remarks of Sen. Stauffer).

14. 397 A.2d 743 (Pa. 1979) (per curiam).

15. *Id.*

16. *Id.* Judge Dalessandro was later the subject of another proceeding, *In re Former Judge Arthur D. Dalessandro*, 596 A.2d 798 (Pa. 1991) (Flaherty & Papadakos, JJ., dissenting), which

met with severe criticism,¹⁷ but the General Assembly took no action at this time. According to one lawmaker, the legislature wanted to give the situation an opportunity to resolve itself.¹⁸

The situation worsened when, in the early 1980s, a Supreme Court justice was the subject of a JIRB investigation. Justice Rolf Larsen "had been accused of using his office politically and of unbecoming conduct, which included making racial slurs about one of his colleagues, Justice Robert N.C. Nix, Jr."¹⁹ The proceedings were conducted behind closed doors, and resulted in a decision not to recommend discipline against the justice.

The *Dalessandro* and *Larsen* cases undermined public confidence in the effectiveness of the JIRB system.²⁰ The cases created the

attracted legislative attention. LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1519 (remarks of Rep. Saurman). In the second *Dalessandro* decision, the court held that a judge who pleaded guilty to two counts of attempted federal income tax evasion did not commit "misbehavior in office" within the meaning of Article V, section 18(1) (relating to automatic forfeiture of office). 596 A.2d at 798.

17. *Special Senate Committee Report*, *supra* note 11, at iii.

18. LEGIS. J. NO. 44-SENATE, *supra* note 13, at 2436.

19. *Special Senate Committee Report*, *supra* note 11, at 32. For a discussion of this proceeding, see Howard Gibson, *Larsen Probe Secrecy Decried*, PA. L.J.-REP., June 14, 1982, at 1.

20. Judicial scandals and controversial decisions continued to play a key role throughout the decade-long struggle for reform, for they continued in a seemingly endless stream during that period. The controversial decisions included several in cases spawned by the Larsen proceedings. See *First Amendment Coalition v. Judicial Inquiry & Review Bd.*, 784 F.2d 467 (3d Cir. 1986) (Adams, Gibbons, Sloviter & Mansmann, JJ., dissenting) (en banc); *In re Subpoena on Judicial Inquiry & Review Bd.*, 517 A.2d 949 (Pa. 1986); *Application of Surrick*, 470 A.2d 447 (Pa. 1983) (Nix & McDermott, JJ., dissenting); *First Amendment Coalition v. Judicial Inquiry & Review Bd.*, 460 A.2d 722 (Pa. 1983) (Nix, J., dissenting).

The scandals included a number of widely-publicized cases, such as the *O'Kicki* case from Cambria County and the *Fink* case from Potter County. For press accounts of these cases, see *JIRB Suspends Cambria Judge*, PA. L.J.-REP., Oct. 17, 1988, at 1; Andrew S. Ross, *Court Showdown Looms in Potter Judge Suspension*, PA. L.J.-REP., Feb. 9, 1987, at 1; *Potter Judge Denied TRO*, PA. L.J.-REP., Nov. 17, 1986, at 1.

The Roofers Union scandal from Philadelphia also attracted considerable attention. For scholarly discussions of some of the cases that arose from this scandal, see Martina Bernstein, *Judicial Ethics—Uncertain Standard for Determination of Legitimacy of Receipt of Gift to Pennsylvania Judges—Matter of Braig*, 520 Pa. 409, 554 A.2d 493 (1989), 63 TEMP. L. REV. 425 (1990); Jacquelyn J. Fatula, *Judicial Conduct—Varying Use of Substantive Evidence and Standard for Determining Proper Gift—In re Chiovero*, 524 Pa. 181, 570 A.2d 57 (1990), 64 TEMP. L. REV. 299 (1991).

Perhaps the most widely-publicized scandal involved several members of the Supreme Court. In December 1992, the Supreme Court, by a two-to-one vote, publicly reprimanded Justice Larsen for contacting an Allegheny County judge about a case before her. *Matter of Larsen*, 616 A.2d 529 (Pa. 1992) (per curiam), *cert. denied*, 114 S. Ct. 65 (1993). See also *Justices Reject Appeal of Larsen Reprimand*, PA. L.J., Oct. 11, 1993, at 8. Justice Larsen responded by accusing Justices Zappala and Cappy of various acts of misconduct, including commandeering a car and trying to run him down with it. Attorney General Ernest D. Preate, Jr. initiated an investigation

impression that judicial misconduct was being swept under the rug. Limited public information about Board proceedings compounded this impression.²¹ The resulting crisis in public confidence²² gave birth to the reform movement.²³

B. The General Assembly: 1983-84 Session

Legislators responded to the *Dalessandro* and *Larsen* cases with six bills and one resolution addressing judicial discipline. The bills took several forms. One bill²⁴ was a two-page proposal that would have modified the composition and powers of the JIRB. Two other bills²⁵ proposed extensive changes in the JIRB system. The three remaining bills called for changes throughout the Judicial Article.²⁶

The Senate passed one reform bill²⁷ by a vote of 47 to 0. Some senators later questioned the bill's impact on the separation of

which resulted in indictments against Larsen in late October 1993. Lisa Brennan, *Grand Jury Charges Larsen in Prescription Drug Scheme*, PA. L.J., Nov. 1, 1993, at 1. Some persons also called for disciplinary action against the justice. Peter J. Shelly, *Larsen Object of Another Probe*, THE PATRIOT (Harrisburg, Pa.), Oct. 30, 1993, at B8. In addition, the House of Representatives instituted an investigation that may lead to impeachment proceedings. Peter J. Shelly, *House OKs Own Probe of Larsen*, THE PATRIOT (Harrisburg, Pa.), Nov. 24, 1993, at A1.

These scandals and decisions helped maintain legislative interest in judicial discipline. They provided motivation for change, LEGIS. J. NO. 17-SENATE, 170th General Assembly, 1986 Sess. 1779 (remarks of Sen. Lewis), and identified problems that needed to be resolved. Moreover, they created pressure on the legislature because constituents reacted to these judicial scandals and controversial decisions by contacting their legislators and demanding change. See, e.g., LEGIS. J. NO. 3-HOUSE, 177th General Assembly, 1993 Sess. 54 (remarks of Rep. Kukovich); LEGIS. J. NO. 19-SENATE, 168th General Assembly, 1984 Sess. 1953-1954 (remarks of Sen. O'Connell). Judicial scandals and controversial decisions were a blessing in disguise in that they galvanized support for reform. LEGIS. J. NO. 11-SENATE, 175th General Assembly, 1991 Sess. 161 (remarks of Sen. Jubelirer). See also Lisa Brennan, *Larsen Charges Against Colleagues Prompt New Calls for Reform*, PA. L.J., Dec. 7, 1992, at 1 (spokespersons for the governor and a state senator agree that the crisis surrounding the Supreme Court in late 1992 could promote final passage of a judicial discipline bill).

21. For a discussion of the rules on confidentiality, see *infra* notes 175-78 and accompanying text.

22. Even the JIRB's executive director acknowledged the lack of public confidence in the system. He said "perhaps there is a lack of confidence that there are mechanisms in place to resolve those problems that have to be resolved." Andrew S. Ross, *Keuch Explains JIRB Role*, PA. L.J.-REP., Sept. 1, 1986, at 1.

23. Perhaps the most important goal of the reform movement was to restore public confidence in the judicial discipline commission system. See, e.g., LEGIS. J. NO. 6-HOUSE, 175th General Assembly, 1991 Sess. 92 (remarks of Rep. DeWeese).

24. H.R. 1895, 1984 Sess.

25. H.R. 1319, 1983 Sess.; H.R. 1996, 1984 Sess.

26. S. 792, 1983 Sess.; S. 1100, 1983 Sess.; H.R. 846, 1983 Sess.

27. S. 1100, 1983 Sess.

powers,²⁸ causing the Senate to pass a modified version of the bill.²⁹ Neither bill came up for a vote in the House.

The General Assembly did not pass a reform bill during the 1983-1984 session. The Senate, however, passed a resolution calling for a special Senate committee to study several issues relating to the judiciary.³⁰ One such issue was the Pennsylvania Code of Judicial Conduct.

The Committee submitted a report in November 1984 recommending numerous changes. Some of these recommendations did not require constitutional amendments. For example, the Committee recommended that the legislature provide the JIRB with an adequate budget.³¹ Some Committee recommendations, however, did require constitutional amendments. These called for: (1) establishing an independent judicial discipline board with the authority to remove judges from office; (2) changing the disciplinary board's composition to reduce the influence of judges; (3) reducing "the ability of any one appointing authority to hamper the effectiveness of the board by failure to make appointments in a timely fashion;"³² and (4) opening board proceedings to the public after the preliminary investigation stage.³³

The Committee released its report in the closing days of the 1983-1984 legislative session. Consequently, legislators could not introduce bills to implement the Committee's recommendations. Those recommendations, however, provided a starting point for bills during the 1985-1986 session.

C. *The General Assembly: 1985-1986 Session*

Legislators introduced five reform bills during the 1985-1986 session.³⁴ While the Senate passed one of these bills,³⁵ the House failed to vote on any of them. The Senate then amended a bill that had

28. LEGIS. J. NO. 44-SENATE, 168th General Assembly, 1984 Sess. 2431 (remarks of Sen. Stauffer).

29. H.R. 846, 1983 Sess.

30. S. Res. 54, 1983 Sess.

31. *Special Senate Committee Report*, *supra* note 11, at 40-41. At the time, JIRB had a budget of about \$300,000 a year. Although this was the third largest budget in the nation for a judicial disciplinary commission, the Board had a small staff. *Id.* at 30-31. The Board did not even have a full-time prosecutor until 1986. Ross, *supra* note 22, at 1.

32. *Special Senate Committee Report*, *supra* note 11, at 40. During most of 1984, the Board had two vacant positions. Governor Thornburgh had exclusive authority to fill those positions.

33. *Id.* at 39-40.

34. See S. 1, 1985 Sess.; S. 842, 1985 Sess.; H.R. 489, 1985 Sess.; S. 1504, 1986 Sess.; H.R. 1451, 1986 Sess.

35. S. 1, 1985 Sess.

already cleared the House³⁶ by deleting everything in the bill and substituting provisions concerning judicial discipline. The House, however, never considered the amended version of the bill.

Why did reform bills repeatedly clear the Senate but not the House? The answer may lie in the different opinions of persons in leadership positions. The Senate Majority Leadership clearly supported reform. Senator Robert C. Jubelirer (then Majority Leader) and Senator John Stauffer (then Majority Whip) each offered reform proposals during the 1983-1984 session,³⁷ and Senator Stauffer (who became Majority Leader) introduced another reform measure during the 1985-1986 session.³⁸ The House leadership, in contrast, did not support reform; advocates of reform claimed that Representative James J. Manderino (then Majority Leader) blocked reform measures.³⁹

During both the 1983-1984 and the 1985-1986 sessions, Republicans formed the majority party in the Senate and Democrats formed the majority party in the House of Representatives. Nevertheless, leadership differences on judicial discipline did not divide along party lines.⁴⁰ The differences reportedly stemmed from geographical factors. Representative Manderino, unlike the majority leadership in the Senate, represented a district in western Pennsylvania. According to one advocate of reform, "it appears there is some reason why they feel they have to be defensive in terms of the western Pennsylvanians who sit on the Supreme Court It's a defensive action on their behalf."⁴¹ Whatever the reason for Representative Manderino's opposition, a reform measure would not pass the House as long as he was Majority Leader.

36. House Bill 260 of the 1985 Session, which concerned tax exemptions for the surviving spouse of a veteran.

37. Senator Jubelirer introduced Senate Bill 1100 in the 1983 Session; Senator Stauffer introduced Senate Bill 792 in the 1983 Session, plus judicial discipline amendments to House Bill 846 in the 1983 Session.

38. S. 1, 1985 Sess.

39. Ross, *supra* note 22, at 15.

40. Legislators seemed intent on keeping partisan politics out of the debate over judicial discipline; they constantly stressed the bipartisan support for reform legislation. *See, e.g.*, LEGIS. J. NO. 11-SENATE, 175th General Assembly, 1991 Sess. 165, 166 (remarks of Sen. Mellow); LEGIS. J. NO. 48-SENATE, 174th General Assembly, 1990 Sess. 2433 (remarks of Sen. Jubelirer); LEGIS. J. NO. 73-HOUSE, 173rd General Assembly, 1989 Sess. 1991 (remarks of Rep. DeWeese).

41. Ross, *supra* note 22, at 1.

D. The Beck Commission: 1987-1988

The political scene in Harrisburg changed in January 1987 when Robert P. Casey succeeded Richard Thornburgh as governor.⁴² Six months after his inauguration, Governor Casey appointed a Judicial Reform Commission to "examine issues related to the judicial branch and to recommend such changes in law and procedure as it finds advisable."⁴³ Superior Court Judge Phyllis W. Beck chaired the group, which became known as the Beck Commission.

The Commission's January 1988 report focused on four areas: (1) administration and utilization; (2) judicial discipline; (3) finance; and (4) judicial selection and retention. The Commission offered several recommendations for changing the JIRB system. Like the special Senate committee of 1983-1984, the Commission recommended some changes that did not require constitutional amendments. Most of the Commission's recommendations, however, required constitutional amendments to become effective. Among other things, the Commission recommended: (1) dividing the JIRB system into two parts, an investigative division in the executive branch and an adjudicative division in the judicial branch; (2) empowering the adjudicative division to impose discipline subject to judicial review; and (3) reducing the confidentiality of disciplinary proceedings.⁴⁴

The legislature quickly responded to the Commission's recommendations. Senator Greenleaf introduced the first bill incorporating many of the Commission's recommendations⁴⁵ four months after the Commission released its report. While the Senate passed that bill, the House did not vote on it.

The Commission's report also had a swift impact outside of the legislature. In November 1988, a panel sponsored by the Pennsylvanians for Modern Courts issued a report with recommendations that were "closely aligned" with those proposed by the Beck Commission.⁴⁶ Former Superior Court Chief Judge Edmund B. Spaeth, Jr., the co-chair of the Pennsylvanians for Modern Courts, explained that the group's "main concern [was] to get the Legislature

42. Interestingly, both men attended the 1967-1968 Constitutional Convention that established the JIRB system.

43. Exec. Order No. 14 (July 16, 1987).

44. REPORT OF THE GOVERNOR'S JUDICIAL REFORM COMMISSION 29-34 (1988) [hereinafter BECK COMMISSION REPORT].

45. S. 1399, 1988 Sess.

46. Maher, *supra* note 12, at 1.

to consider these changes now."⁴⁷ The General Assembly ultimately considered many of the Beck Commission's recommendations because those recommendations provided the model for several reform bills.⁴⁸

E. The General Assembly: 1987-1988 Session

The 1987-1988 session of the General Assembly was similar to the two previous legislative sessions in several respects. Again, several reform bills were introduced.⁴⁹ Again, the Senate passed reform proposals⁵⁰ while the House did not. Again, advocates of reform in the Senate tried to amend a House-passed bill by deleting everything in the bill and substituting provisions concerning judicial discipline.⁵¹ This time, however, the Senate defeated that proposal.

The drive for reform failed to achieve a breakthrough by the end of 1988, yet the reformers' tactics are noteworthy. Reformers were persistent;⁵² they introduced bills session after session, including bills that previously had failed. Senate Bill 1, Senate Bill 2 and House Bill 835 of the 1987-1988 legislative session closely resembled bills that had failed during the previous legislative session.⁵³ The reformers were also willing to compromise, to adopt others' recommendations in order to achieve success. For example, Senator Greenleaf, who introduced Senate Bill 2, also introduced Senate Bill 1399, which was the first bill

47. *Id.* at 1, 10.

48. See, e.g., LEGIS. J. NO. 23-SENATE, 173rd General Assembly, 1989 Sess. 422 (remarks of Sen. Lewis) (referring to S. 595, 1989 Sess.); Tom Troy, *Judicial Discipline Bill Gets Final Nod*, PA. L.J.-REP., Feb. 18, 1991, at 1 (referring to H.R. 1, 1991 Sess.).

49. S. 1, 1987 Sess.; S. 2, 1987 Sess.; H.R. 835, 1987 Sess.; H.R. 1035, 1987 Sess.; S. 1399, 1988 Sess.

50. S. 1, 1987 Sess.; S. 1399, 1988 Sess.

51. H.R. 40, 1987 Sess. The House-passed version of the bill proposed a constitutional amendment allowing the General Assembly to make special tax exemptions for homestead property.

52. Several legislators were particularly persistent. Senator Stauffer offered reform proposals in three consecutive legislative sessions. See S. 792, 1983 Sess.; S. 1, 1985 Sess.; S. 1, 1987 Sess. Representative Lois Sherman Hagarty introduced reform bills in five straight legislative sessions. See H.R. 1319, 1983 Sess.; H.R. 489, 1985 Sess.; H.R. 835 and H.R. 1035, 1987 Sess.; H.R. 846, 1989 Sess.; H.R. 2341, 1992 Sess. Representative Hagarty also attempted to amend House Bill 1130 (1985 Sess.) to include provisions concerning judicial discipline, but the House found that the amendment violated the constitutional prohibition against bills containing more than one subject. LEGIS. J. NO. 66-HOUSE, 169th General Assembly, 1985 Sess. 1983. Finally, Senator Stewart Greenleaf introduced seven reform bills from 1985 to 1993. See S. 842, 1985 Sess.; S. 1504, 1986 Sess.; S. 2, 1987 Sess.; S. 1399, 1988 Sess.; S. 595, 1989 Sess.; S. 1000, 1991 Sess.; S. 186, 1993 Sess.

53. Senate Bill 1 (1987 Sess.) and House Bill 835 (1987 Sess.) were very similar to Senate Bill 1 (1985 Sess.) which passed the Senate but died in the House. Senate Bill 2 (1987 Sess.) was virtually identical to Senate Bill 1504 (1986 Sess.) which died in the Senate Appropriations Committee.

to incorporate the recommendations of the Beck Commission.⁵⁴ The Senate passed the latter bill, but the House never voted on it.

Reformers failed to overcome the opposition between 1983 and 1988. Partly because of changes in the House leadership, reformers would finally taste success during the 1989-1990 legislative session.⁵⁵

F. The General Assembly: 1989-1990 Session

The 1989-1990 legislative session differed from its predecessors in several respects. Advocates of reform in the Senate adopted a novel strategy for passing a bill through the General Assembly: having the Senate pass two very different bills in hopes that the House would pass one of them.⁵⁶ The entire Senate went along with this approach and passed both bills⁵⁷ in early 1989.

In the House, the 1989-1990 session witnessed a changing of the guard in the majority leadership. Representative K. Leroy Irvis, who had been Speaker since January 1983, retired after the 1987-1988 legislative session. Representative Manderino became Speaker and Representative Robert W. O'Donnell of Philadelphia became Majority Leader. Representative H. William DeWeese, who represented portions of Greene, Fayette, and Washington Counties, became Majority Whip.⁵⁸

The significance of these changes quickly became apparent. Although Representative DeWeese, like Representative Manderino, held a seat from western Pennsylvania, the new Majority Whip supported reform of the JIRB system. His reform bill,⁵⁹ introduced in February

54. S. 1399, 1987 Sess.

55. The House and Senate leaderships' support of reform measures was no doubt an important factor in the ultimate success of the reform movement. Another important factor was widespread public support for change. As Judge Beck stated, "I [do not] see reform going anywhere unless we have the grassroots support of the citizens of the state." Maher, *supra* note 12, at 10.

Yet another important factor was the work of interest groups. The Pennsylvanians for Modern Courts, the Pennsylvania Bar Association, the Philadelphia Bar Association, and Common Cause were just a few of the groups that lobbied for reform.

56. LEGIS. J. NO. 23-SENATE, 173rd General Assembly, 1989 Sess. 423 (remarks of Sen. Brightbill); *Id.* at 427 (remarks of Sen. Jubelirer).

57. Senate Bill 1 of the 1989 Session proposed a judicial discipline commission system in which one agency investigated and adjudicated complaints against judicial officers. Senate Bill 595 of the 1989 Session proposed a system in which one agency performed investigatory and prosecutory functions and another agency performed adjudicatory functions.

58. Significantly, Representative DeWeese had supported reform measures as Chair of the House Judiciary Committee. LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1517 (remarks of Rep. Piccola).

59. H.R. 539, 1989 Sess.

1989, was the first reform proposal introduced by a member of the House majority leadership team. It passed the House on December 5, 1989. The vote on final passage was reconsidered, however, and the bill hung in limbo for several weeks.

As of December 1989, legislators had introduced four reform bills.⁶⁰ Two bills passed the Senate, but all failed to pass the House. Unfortunately, Speaker Manderino passed away on December 26, 1989 and Representative O'Donnell subsequently became Speaker and Representative DeWeese became Majority Leader.

In January 1990, the House acted on procedural motions concerning Representative DeWeese's bill, but the General Assembly took no further action on reform bills for several months. The logjam finally broke in the summer of 1990 when the House passed two bills to reform the judicial discipline system. An amended version of Representative DeWeese's bill passed the House on June 11, and an amended version of a Senate bill passed the House on June 30. The Senate concurred in the House amendments to the latter bill, and Senate Bill 1 became Joint Resolution 1 of 1990.⁶¹ Thus, the first stage in the constitutional amendment process was complete.

G. The General Assembly: 1991, Stage II of the Amendment Process

Legislators wasted little time in moving to the second stage of the constitutional amendment process. Representative DeWeese introduced House Bill 1 on January 30, 1991. The bill was not exactly the same as Joint Resolution 1 of 1990, so the House amended the bill to make the two measures identical. The bill then passed by a vote of 198 to 0.⁶²

One prominent senator criticized the House's handling of the bill. He claimed that "this bill came to us in the middle of the night on the 29th of June in a trade for a vote on the State Song, [and] an amendment was stuck in the House by a Member who was in Russia at

60. S. 1, 1989 Sess.; S. 595, 1989 Sess.; H.R. 539, 1989 Sess.; H.R. 846, 1989 Sess.

61. Joint Resolution 1 of 1990 proposed extensive changes in the judicial discipline commission system. In addition, it included provisions concerning financial disclosure by judges and a section addressing the financial affairs and budgets of the unified judicial system. See S. 1, 1989 Sess.

62. H.R. 1, 1991 Sess.

the time."⁶³ That senator voted against the bill, but he was the only one; the Senate passed House Bill 1 on February 12, 1991.⁶⁴

The General Assembly had passed the same judicial discipline measure in two consecutive sessions, so only one step remained in the constitutional amendment process: passage by the citizens of Pennsylvania. The measure was scheduled to be on the ballot in the May 1991 primary. Unfortunately, the people would never have an opportunity to vote on the proposal.

H. *The Kremer Case*

Several persons filed lawsuits challenging the ballot question on judicial discipline. Interestingly, the plaintiffs included a former president of the Pennsylvania Trial Lawyers Association, the president of the state Teamsters Union, and two court of common pleas judges.⁶⁵ The cases were consolidated, and on April 1, 1991, Commonwealth Court President Judge David W. Craig enjoined the ballot question on judicial discipline.⁶⁶ Among other things, he found that the legislature had improperly delegated authority to the Secretary of the Commonwealth to determine when the question would appear on the ballot. He further determined that the Secretary of the Commonwealth had failed to properly advertise the proposal in 1990.⁶⁷

Judge Craig's ruling "was stayed automatically when the state appealed the decision but [he] lifted the automatic stay and the Supreme Court . . . refused to reinstate [it]."⁶⁸ This ruling effectively killed the ballot question.⁶⁹ The Pennsylvania Supreme Court affirmed Judge Craig's decision almost one year after the 1991 primary.⁷⁰

I. *The General Assembly: 1992*

The *Kremer* case moved "proponents of judicial reform 'back to square one.'"⁷¹ Leading reform advocates disagreed over the best way

63. LEGIS. J. NO. 11-SENATE, 175th General Assembly, 1991 Sess. 164 (remarks by Sen. Fumo).

64. H.R. 1, 1991 Sess.

65. Mark Tarasiewicz & Hugh Bronstein, *Judicial Amendment Down for the Count*, PA. L.J.-REP., Apr. 8, 1991, at 1.

66. Judge Craig's decision was not published. For a discussion of the decision, see Kremer v. Grant, 606 A.2d 433 (Pa. 1992); Tarasiewicz & Bronstein, *supra* note 65; Mark Tarasiewicz, *Judicial Referendum Killed by High Court*, PA. L.J.-REP., Apr. 15, 1991, at 1.

67. *Kremer*, 606 A.2d at 433.

68. Tarasiewicz & Bronstein, *supra* note 65, at 1.

69. *Id.*

70. *Kremer v. Grant*, 606 A.2d 433 (Pa. 1992).

71. Tarasiewicz & Bronstein, *supra* note 65, at 1 (quoting Robert R. Gentzel, a spokesperson

to proceed, causing tension in the reform movement. For example, some advocates of reform drafted a proposal responding to the *Kremer* decision,⁷² which others believed conceded too much to the Supreme Court.⁷³ Consequently, legislators responded to the *Kremer* decision by introducing three separate bills.⁷⁴

Of these bills, Senate Bill 1000 became the vehicle for reform. After spending eleven months in the Senate Judiciary Committee, the bill made rapid progress through the General Assembly. The Senate passed one version of the bill on May 5, 1992, and the House passed another version on June 24. On July 1, the Senate concurred in the House amendments.⁷⁵ The first stage in the constitutional amendment process was thus complete for a second time.

J. The General Assembly: 1993

Legislators introduced three reform bills in January and February of 1993. One of these bills⁷⁶ called for a constitutional convention to revise Articles V and XI of the 1968 Constitution. The other two bills⁷⁷ were identical to Joint Resolution 1 of 1992. House Bill 1, introduced by now Speaker DeWeese, sailed through the General Assembly.

The House and Senate passed the bill in time for a judicial discipline question to appear on the ballot in the May 1993 primary. During the House debate, however, several legislators expressed concern that another lawsuit would be filed to keep the issue off the ballot.⁷⁸ Their concerns proved well-founded.

for the Pennsylvania Attorney General's office).

72. Mark Tarasiewicz, *New Judicial Discipline Bill Floated Among Lawmakers*, PA. L.J.-REP., Jan. 6, 1992, at 1.

73. *Id.* at 11. See also Mark Tarasiewicz, *Judicial Reform Proposals Introduced in Legislature*, PA. L.J.-REP., Feb. 3, 1992, at 1.

74. S. 1000, 1991 Sess.; H.R. 2341, 1992 Sess.; H.R. 2491, 1992 Sess.

75. Joint Resolution No. 1 of 1992, like Joint Resolution No. 1 of 1990, proposed extensive changes in the judicial discipline commission system. Unlike the earlier measure, however, Joint Resolution No. 1 of 1992 did not include provisions concerning financial disclosure by judges, nor did it include a section on the financial affairs and budgets of the unified judicial system. Joint Resolution No. 1 of 1992 was also unlike its predecessor in that it addressed the compensation of judicial officers who were removed or suspended.

76. S. 396, 1993 Sess.

77. H.R. 1, 1993 Sess.; S. 186, 1993 Sess.

78. See, e.g., LEGIS. J. NO. 4-HOUSE, 177th General Assembly, 1993 Sess. 57 (remarks of Rep. Caltagirone); *Id.* at 58 (remarks of Rep. McNally).

K. *The Reil Case*

William Reil, a spokesman for the group Victims of a Corrupt Legal System, filed suit to prevent the judicial discipline question from appearing on the May 1993 primary ballot. Among other things, Reil argued that the amendment violated the state and federal constitutions "because it would give some judges and other government officials absolute immunity while performing their duties."⁷⁹ Reil also filed a petition accusing several officials (including the governor, the lieutenant governor, the attorney general, and the secretary of the Commonwealth) of treason, racketeering, obstruction of justice, fraud, abuse of power, and corruption.⁸⁰

The *Reil* case, like the *Kremer* case, was decided by Commonwealth Court President Judge David W. Craig. Judge Craig dismissed Reil's suit on April 30, 1993⁸¹ and the Supreme Court affirmed this decision on May 14, 1993.⁸² The proposed changes in the JIRB system therefore were submitted to the voters in the May 1993 primary election.

L. *The May 1993 Primary*

The advocates of reform did not assume that the voters would automatically approve the proposed changes in judicial discipline. Groups supporting the measure (including the League of Women Voters, the Pennsylvania Bar Association, and Pennsylvanians for Modern Courts)⁸³ worked to generate popular support for the measure. Their efforts included writing editorials⁸⁴ and holding a series of news conferences around the state to generate support for the measure.⁸⁵

79. Joseph Coleman, *Suit Targets Amendment on Disciplining of Judges*, THE PATRIOT (Harrisburg, Pa.), Apr. 16, 1993, at B3.

80. Joseph Coleman, *Court Asked to Kill Referendum*, THE PATRIOT (Harrisburg, Pa.), Apr. 23, 1993, at B4.

81. Judge Craig's decision was not published. For a discussion, see *Judicial Reform Measure Stays on Ballot*, THE PATRIOT (Harrisburg, Pa.), May 1, 1993, at A3.

82. *Reil v. Secretary of the Commonwealth*, 625 A.2d 611 (1993) (per curiam) (Papadakos, J., dissenting).

83. Carmen Brutto, *Judge Discipline is Issue*, THE PATRIOT (Harrisburg, Pa.), May 16, 1993, at B4.

84. Edmund B. Spaeth, Jr., et al., *Issuing a Call to Arms*, PA. L.J., May 17, 1993, at 2. See also Diane Doyle, *On Disciplining Judges*, PITT. POST-GAZETTE, May 3, 1993, at D2 (editorial by the President of the Allegheny County Council of the League of Women Voters).

85. Mark A. Tarasiewicz, *New Judicial Discipline System by August*, PA. L.J., May 24, 1993, at 1.

While certain prominent public officials, including Governor Casey,⁸⁶ and various newspapers⁸⁷ supported the measure, it did not enjoy unanimous acceptance.⁸⁸ The Pennsylvania Commission for Better Justice (chaired by Cyril E. Sagan, a chemistry professor at Slippery Rock University) paid for billboard advertisements stating "Shall judges become emperors? On Judicial Question: VOTE NO!"⁸⁹ Common Cause, which had supported the judicial discipline measure in the General Assembly, opposed it in the primary. A spokesperson explained that Common Cause had concluded that "the current proposal [is not] strong enough to make a real difference."⁹⁰

On election day only 19.1 percent of the state's registered voters cast ballots on the judicial discipline proposal.⁹¹ The measure passed with ease: 928,932 people voted for it, while 200,908 people voted against it.⁹² Finally, judicial reformers completed the three-step process of amending the constitution.

M. The 1993 General Assembly: Implementing Legislation

Just one month after the voters approved the judicial discipline proposal, legislators introduced two additional bills designed to reform the judicial discipline system.⁹³ Both measures called for a limited constitutional convention to amend Article V. The legislature referred these bills to committee, where they remained as of November 25, 1993.

House Bill 699, in contrast, quickly marched through the legislature. The House-passed version of the bill⁹⁴ dealt with the Commonwealth's portion of fines. After the Senate Appropriations Committee added provisions implementing the constitutional amendments on judicial discipline,⁹⁵ the Senate passed the amended

86. *Casey Urges 'Yes' Vote on Judicial Discipline*, PA. L.J., May 3, 1993, at 11.

87. See, e.g., *Lawyers on Parade*, PHILADELPHIA INQUIRER, May 3, 1993, at A14 (editorial); *Judicial Reform*, THE PATRIOT (Harrisburg, Pa.), May 12, 1993, at A8; *Reform Judicial Discipline*, MORNING CALL (Allentown, Pa.), May 16, 1993, at A24.

88. See, e.g., Hrubovcak, *Defeat Judicial Reform*, PITT. POST-GAZETTE, May 16, 1993, at AA-3 (editorial).

89. *From Voting Booths to Billboards: Local Election Scenes*, THE PATRIOT (Harrisburg, Pa.), May 19, 1993, at B3 (emphasis in original).

90. Susan Mitchell, *All a Mirage?*, PA. L.J., May 10, 1993, at 2.

91. Out of 5,902,001 registered voters, only 1,129,840 cast ballots on the judicial discipline question. *The People Have Spoken? A Few Did*, THE PATRIOT (Harrisburg, Pa.), May 20, 1993, at B4.

92. *Id.*

93. H.R. 1843, 1993 Sess.; H.R. 1938, 1993 Sess.

94. H.R. 699, 1993 Sess.

95. *Id.*

bill on June 22, 1993. The House concurred in the Senate amendments on June 23, 1993. Lieutenant Governor Mark Singel, who became acting governor shortly before Governor Casey had a heart-liver transplant in June 1993, signed the bill into law on July 2, 1993.⁹⁶

N. Subsequent Developments

Pursuant to the 1993 amendments, the Judicial Inquiry and Review Board was dissolved on August 16, 1993.⁹⁷ The new judicial discipline commission system only existed on paper at that time because no one had yet been named to the new disciplinary bodies.⁹⁸ The Supreme Court named its appointees on August 27,⁹⁹ and Acting Governor Singel named his appointees on October 25.¹⁰⁰ The members of the Judicial Conduct Board were sworn in on November 5,¹⁰¹ and the members of the Court of Judicial Discipline were sworn in on November 23.¹⁰² At that point, Pennsylvania really had a new judicial discipline commission system.

III. Significant but Focused Change: The Substance of the 1993 Amendments

Senator Robert C. Jubelirer described one of the earliest reform proposals as offering comprehensive judicial reform.¹⁰³ Subsequently, reform proposals narrowed in focus, and supporters fought to maintain that focus.¹⁰⁴ As a result, the 1993 amendments were limited in scope, amending only Article V, sections 16 and 18. Within each section, however, the 1993 amendments made significant changes.

96. No. 1993-56, enacted July 2, 1993, 1993 Pa. Laws 395.

97. PA. CONST. Sched. Art. 5, § 24(a) (adopted 1993).

98. Sharon L. Lynch, *New Judicial Discipline Plan Gets Final OK*, THE PATRIOT (Harrisburg, Pa.), Aug. 12, 1993, at B10.

99. *Appointments Made For Judicial Board*, PA. L.J., Sept. 6, 1993, at 11.

100. John L. Kennedy, *New Judicial Discipline Panels Filled*, PA. L.J., Nov. 1, 1993, at 6; Peter J. Shelly, *Two Boards Appointed on Judicial Misconduct*, THE PATRIOT (Harrisburg, Pa.), Oct. 26, 1993, at B7.

101. Rich Kirkpatrick, *New Judicial Board Sworn In*, THE PATRIOT (Harrisburg, Pa.), Nov. 5, 1993, at B4.

102. *Judging Judges*, THE PATRIOT (Harrisburg, Pa.), Nov. 29, 1993, at A6 (editorial).

103. LEGIS. J. NO. 19-SENATE, 168th General Assembly, 1984 Sess. 1951 (referring to S. 1100, 1983 Sess.).

104. See, e.g., LEGIS. J. NO. 4-HOUSE, 177th General Assembly, 1993 Sess. 65 (debate on an amendment to add language concerning the retirement system for judicial officers); LEGIS. J. NO. 23-SENATE, 173rd General Assembly, 1989 Sess. 424 (debate over an amendment to add language concerning merit selection); *Id.* at 419-20 (debate over an amendment to add language changing "unified judicial system" to "judicial system").

A. Section 18

The 1993 amendments abolished the JIRB system and replaced it with a new judicial discipline commission system. The 1993 amendments included some provisions that were similar or identical to provisions in the 1968 Constitution. Yet, the new system differs from its predecessor in several important respects, including: (1) the administrative apparatus for imposing discipline; (2) the process used to impose discipline; (3) the confidentiality of proceedings; (4) the applicability of the disciplinary process; (5) the grounds for imposing discipline; (6) the types of orders allowed in cases involving judicial misconduct; and (7) the types of orders allowed in cases involving a disability.

1. *Administrative Apparatus*—The 1968 Constitution created a disciplinary commission system in which one agency investigated complaints, held hearings, and decided whether to recommend disciplinary sanctions to the Supreme Court.¹⁰⁵ The 1993 amendments replaced this system with a disciplinary commission system in which one agency investigates and prosecutes misconduct and another holds hearings and decides whether to impose disciplinary sanctions.¹⁰⁶ The amendments included a number of provisions to ensure that both of these agencies operate independently of the Supreme Court.

(a) *The 1968 Constitution*—The JIRB, which operated as an independent agency in the Judicial Branch,¹⁰⁷ was composed of nine members. The Supreme Court appointed five members: three court of common pleas judges and two superior court judges; and the governor appointed four members: two lawyers and two laypersons.¹⁰⁸

Members served four-year terms, but the appointing authority could remove them for cause¹⁰⁹ and fill vacancies for the remainder of the term. The constitution limited membership to four consecutive years, but members could be reappointed after a lapse of at least one year.¹¹⁰

105. See *infra* text accompanying notes 107-20.

106. See *infra* text accompanying notes 122-41.

107. See *Office of Disciplinary Counsel v. Surrick*, 555 A.2d 883 (Pa. 1989) (Zappala & Papadakis, JJ., dissenting); *First Amendment Coalition v. Judicial Inquiry & Review Bd.*, 460 A.2d 722 (Pa. 1983) (Nix, J., dissenting).

108. PA. CONST. art. V, § 18(a) (adopted 1968, repealed 1993). The lawyer members could not be judges.

109. PA. CONST. art. V, § 18(b) (adopted 1968, repealed 1993).

110. *Id.*

Former members could continue to sit on the board for hearings that were in progress at the end of their term.¹¹¹

JIRB members could not hold office in a political party or political organization.¹¹² In addition, the constitution prohibited JIRB members from participating in Board proceedings in which they were the subject of the proceeding.¹¹³

Although the JIRB was independent, the constitution did not empower the Board to establish its own rules of procedure. Ultimately, the Supreme Court had constitutional authority to promulgate rules of procedure for the JIRB.¹¹⁴

(b) *Criticisms of the 1968 Constitution*—The administrative apparatus created by the 1968 Constitution was the object of serious criticism for many reasons.¹¹⁵ The presence of five judges on the nine member JIRB created complaints. Many people questioned whether judges could effectively review allegations of misconduct by other judges.¹¹⁶ Thus, the reform movement strove to reduce the influence of judges on the disciplinary board.¹¹⁷

Additionally, many people questioned whether the JIRB really was independent of the Supreme Court.¹¹⁸ The Court appointed a majority of JIRB members and retained some administrative authority over the Board (e.g., the Court promulgated rules of procedure for the JIRB). Reformers believed that a disciplinary board required independence to accomplish its work¹¹⁹ and sought to reduce the Supreme Court's influence over the disciplinary board.¹²⁰

(c) *The 1993 Amendments*—The reformers did not achieve all of their goals with the 1993 amendments but, instead, compromised where

111. *Id.*

112. PA. CONST. art. V, § 18(c) (adopted 1968, repealed 1993).

113. PA. CONST. art. V, § 18(i) (adopted 1968, repealed 1993).

114. PA. CONST. art. V, § 18(j) (adopted 1968, repealed 1993).

115. The list of criticisms presented here, like similar lists presented elsewhere in this article, is not intended to be comprehensive. Rather, the focus is on those complaints that illustrate the differences between the 1968 Constitution and the 1993 amendments.

116. See LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1516 (remarks of Rep. Hagarty). See also Morris Slater, *And Justice for All?*, PA. L.J.-REP., May 21, 1990, at 2.

117. See LEGIS. J. NO. 6-HOUSE, 175th General Assembly, 1991 Sess. 92 (remarks of Rep. Hagarty).

118. LEGIS. J. NO. 47-HOUSE, *supra* note 116, at 1516 (remarks of Rep. Hagarty).

119. *Id.* at 1517 (remarks of Rep. Piccola).

120. See, e.g., LEGIS. J. NO. 50-SENATE, 176th General Assembly, 1992 Sess. 2483 (remarks of Sen. Bortner); LEGIS. J. NO. 50-SENATE, 168th General Assembly, 1984 Sess. 2644 (remarks of Sen. Snyder).

necessary. In fact, according to one legislator, "the essence of these amendments is compromise."¹²¹ Nevertheless, the 1993 amendments addressed many criticisms of the 1968 Constitution's administrative apparatus.

The 1993 amendments created the Judicial Conduct Board (JCB) in the Judicial Branch.¹²² The JCB contains twelve members.¹²³ The Supreme Court appoints six members: one commonwealth or superior court judge, one justice of the peace, one lawyer, and three laypersons; and the Governor appoints six members: one court of common pleas judge, two lawyers, and three laypersons.¹²⁴ To ensure political balance, no more than one-half of both the Governor's and the Supreme Court's appointees may belong to the same political party.¹²⁵

The 1993 amendments also created the Court of Judicial Discipline (CJD).¹²⁶ Eight members sit on the CJD. The Supreme Court appoints four members: two judges from the courts of common pleas, the superior court, or the commonwealth court, one justice of the peace, and one layperson; and the Governor appoints four members: one judge from the court of common pleas, the superior court, or the commonwealth court, two lawyers, and one layperson.¹²⁷ As with the

121. LEGIS. J. NO. 47-HOUSE, *supra* note 116, at 1516 (remarks of Rep. Broujos).

122. PA. CONST. art. V, § 18(a) (adopted 1993).

123. Some legislators opposed the creation of boards with an even number of members. Since a majority vote is needed for action, they argued that the Supreme Court's appointees could effectively block disciplinary action. LEGIS. J. NO. 47-HOUSE, *supra* note 116, at 1516 (remarks of Rep. Hagarty); *Id.* at 1517 (remarks of Rep. Piccola). Supporters of even-numbered boards argued that they ensure that no one branch of government controls the system; disciplinary action requires a consensus among board members appointed by different branches. *Id.* at 1518 (remarks of Rep. Caltagirone).

124. PA. CONST. art. V, § 18(a)(1)-(2) (adopted 1993). The lawyers appointed to the Board cannot be judges. In addition, the judges appointed to the Board cannot be senior judges. The Pennsylvania Supreme Court had appointed senior judges to the JIRB. *See Surrick v. Hoffman*, 458 A.2d 940 (Pa. 1983) (*per curiam*) (Nix & McDermott, JJ., dissenting).

The composition of the Board and the Court of Judicial Discipline represents a compromise. Although one key goal of the reform movement was to reduce the Supreme Court's control of the disciplinary commission system, a number of legislators opposed proposals that would have given the Executive Branch authority to appoint a majority of the members of the disciplinary commissions. For example, one legislator noted that the Executive Branch, like the Judiciary, has had its share of scandals. LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1518, 1524 (remarks of Rep. McNally). That lawmaker also noted that Senate confirmation of appointees could result in extended vacancies on the commissions for purely political reasons. *Id.* at 1525.

125. PA. CONST. art. V, § 18(a)(3) (adopted 1993).

126. PA. CONST. art. V, § 18(b) (adopted 1993).

127. PA. CONST. art. V, § 18(b)(1) (adopted 1993). The lawyers appointed to the court cannot be judges. In addition, the judges appointed to the court cannot be senior judges.

JCB, to ensure political balance, no more than one-half of both the Governor's and the Supreme Court's appointees may belong to the same political party.¹²⁸

The amendments contain similar provisions for members of both agencies. Members serve four-year terms, although former members of the CJD continue to sit on the court for hearings in progress at the end of the term.¹²⁹ Vacancies are filled for the remainder of the term.¹³⁰ A member cannot serve more than four consecutive years, but can be reappointed after a lapse of at least one year.¹³¹

Members of the Board and the Court cannot hold office in a political party or organization.¹³² With the exception of judicial officers, members cannot hold a compensated public office or appointment.¹³³ Members lose their seats if they attain a position which would have rendered them ineligible for appointment.¹³⁴ In addition, judicial officers lose their seats upon termination of the position that qualified them for appointment.¹³⁵

The 1993 amendments, unlike the 1968 Constitution, do not empower the appointing authority to remove a member for cause. Rather, both agencies have authority to prescribe general rules governing the conduct of members and may remove a member for a violation of those rules.¹³⁶

The 1993 amendments differ from the 1968 Constitution in explicitly addressing the potential liability of persons involved in the disciplinary process. The amendments provide members of the Board,

Unlike the JCB, the CJD is evenly divided between judicial officers and nonjudicial officers. This may reflect the impact of the new rules on confidentiality. *Cf.*, LEGIS. J. NO. 47-HOUSE, *supra* note 124, at 1526 (remarks of Rep. McHale and Rep. Picolla) (arguing that Supreme Court appointees were less likely to "manipulate" this part of the disciplinary process because the public could view the proceedings). It may also reflect a compromise; although many reformers wanted to reduce the influence of judges on the disciplinary commissions, some legislators believed that the boards which review the conduct of judges should be composed primarily of judges. LEGIS. J. NO. 49-SENATE, 172nd General Assembly, 1988 Sess. 2500 (remarks of Sen. Zemprelli). For example, some legislators argued that the judicial disciplinary commission should be similar to the licensing boards in the Bureau of Professional and Occupational Affairs, which are composed largely of persons from the same profession as the person subject to disciplinary proceedings. *See id.* at 2501 (remarks of Sen. Afflerbach).

128. PA. CONST. art. V, § 18(b)(2) (adopted 1993).

129. PA. CONST. art. V, § 18(a)(3), (b)(2) (adopted 1993).

130. *Id.*

131. *Id.*

132. PA. CONST. art. V, § 18(a)(4), (b)(3) (adopted 1993).

133. *Id.*

134. PA. CONST. art. V, § 18(a)(3), (b)(2) (adopted 1993).

135. *Id.*

136. PA. CONST. art. V, § 18(a)(5), (b)(3) (adopted 1993).

the court, and the staffs of both agencies with absolute immunity from suit for all conduct in the course of their official duties.¹³⁷ The amendments also state that “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.”¹³⁸ Moreover, the new section 18 provides that “no civil action or disciplinary complaint predicated on testimony before the [CJD] may be maintained against any witness or counsel.”¹³⁹

The 1993 amendments also contain a number of provisions intended to ensure that both the Board and the CJD act more independently of the Supreme Court than did the JIRB.¹⁴⁰ Each agency has the authority to appoint its own staff, prepare and administer its own budget (which is to be a separate line item in the budget request of the Judicial Branch), adopt rules of procedure, and take other actions necessary to ensure its efficient operation.¹⁴¹

2. *The Disciplinary Process*—The 1993 amendments change the disciplinary process in part because of alterations in the administrative apparatus. The amendments introduced innovations at every stage of the process, from the investigation of complaints to the judicial review of disciplinary decisions.

137. PA. CONST. art V, § 18(a)(10), (b)(6) (adopted 1993).

138. PA. CONST. art. V, § 18(a)(10) (adopted 1993).

139. PA. CONST. art. V, § 18(b)(6) (adopted 1993).

140. The 1993 amendments reduce the Supreme Court's authority with respect to the judicial discipline commission system, but do not change the Court's authority with respect to attorney discipline. In some states, judges may be disciplined qua attorneys and removed from the bench. See REFERENCE MANUAL NO. 5, *supra* note 2, at 170-71. Under Pennsylvania's 1968 Constitution, the Disciplinary Board could not take action against an attorney for misconduct that occurred while the attorney was a judicial officer. *Office of Disciplinary Counsel v. Anonymous Attorney A.*, 595 A.2d 42 (Pa. 1991) (Papadakos, J., dissenting). Whether the 1993 amendments will lead the Court to reconsider the Disciplinary Board's authority is questionable.

A similar question can be raised about the 1993 amendments' impact on the Supreme Court's authority to impose discipline. Some decisions suggest that the Supreme Court has authority to discipline judicial officers under the general supervisory and administrative authority granted in Article V, sections 1 and 10, or under its King's Bench powers. See, e.g., *Fink v. Supreme Court of Pennsylvania*, 654 F. Supp. 437 (M.D. Pa. 1987); *In re Franciscus*, 369 A.2d 1190 (Pa. 1977), *cert. denied*, 434 U.S. 870 (1977). But see *Petition of Pennsylvania Bar Ass'n*, 460 A.2d 721, 722 (Pa. 1983) (*per curiam*) (Hutchinson, J., concurring). For a discussion of this issue prior to the adoption of the 1968 Constitution, see REFERENCE MANUAL NO. 5, *supra* note 2, at 167-70. If the Supreme Court can impose discipline outside of the judicial discipline commission system, the 1993 amendments will have a much different impact than they would if the Court can only discipline judicial officers using the procedure outlined in section 18.

141. PA. CONST. art. V, § 18(a)(6), (b)(4) (adopted 1993).

(a) *The 1968 Constitution*—The JIRB performed many tasks under the 1968 Constitution: it received and initiated complaints, conducted investigations,¹⁴² held hearings when necessary,¹⁴³ and, when it found “good cause,” recommended disciplinary action to the Supreme Court.¹⁴⁴ The Board, however, could not impose disciplinary sanctions — not even informal sanctions.¹⁴⁵

The Supreme Court lacked the authority to review a JIRB decision which did not recommend disciplinary measures. If the Board did recommend sanctions, however, the Court reviewed “de novo the record of the Board to determine whether the charges [were] established by clear and convincing evidence.”¹⁴⁶ The Court reviewed the record on the law and the facts and could permit the introduction of additional evidence.¹⁴⁷ The Court could approve the JIRB’s recommendation, modify it, or reject it entirely.¹⁴⁸ While the Supreme Court could reconsider its own decision,¹⁴⁹ no other state court could review a disciplinary order of the Supreme Court.¹⁵⁰

(b) *Criticisms of the 1968 Constitution*—Some observers criticized the disciplinary process created in 1968 because the JIRB performed multiple roles. For example, some witnesses before the Beck Commission complained that a single agency was responsible for investigating complaints, holding hearings, and recommending disciplinary sanctions.¹⁵¹ Such a disciplinary system at least appeared unfair to jurists.¹⁵² This system also produced delays, partly because

142. PA. CONST. art V, § 18(e) (adopted 1968, repealed 1993).

143. PA. CONST. art. V, § 18(f) (adopted 1968, repealed 1993).

144. PA CONST. art. V, § 18(g) (adopted 1968, repealed 1993). The court in *Keiser v. Bell*, 332 F. Supp. 608 (E.D. Pa. 1971), rejected a claim that the JIRB system unconstitutionally commingled prosecutory and adjudicatory functions.

145. The Board could not even give informal warnings. *In re XYP*, 567 A.2d 1036 (Pa. 1989). See also Lisa Brennan, *Judicial Review Board Lacks Sanctioning Power*, PA. L.J.-REP., Jan. 8, 1990, at 9.

146. *Matter of Braig*, 554 A.2d 493, 495 (Pa. 1989) (note omitted).

147. PA. CONST. art. V, § 18(h) (adopted 1968, repealed 1993).

148. *Id.*

149. See *In re Greenberg*, 318 A.2d 740 (Pa. 1974) (vacating a suspension).

150. Decisions by the Pennsylvania Supreme Court could be appealed to the United States Supreme Court. In addition, some disciplinary cases resulted in lawsuits in the lower federal courts. See, e.g., *White v. Judicial Inquiry & Review Bd.*, 744 F. Supp. 658 (E.D. Pa. 1990); *Fink v. Supreme Court of Pennsylvania*, 651 F. Supp. 1238 (M.D. Pa. 1987); *Keiser v. Bell*, 332 F. Supp. 608 (E.D. Pa. 1971).

151. In testimony before the Beck Commission, even JIRB members expressed concern about the multiple roles of the Board. BECK COMMISSION REPORT, *supra* note 44, at 89.

152. *Id.* at 89-90.

the JIRB had to investigate and adjudicate cases with inadequate staff assistance.¹⁵³

Other observers expressed concern about the Supreme Court's role in the process. The Court's *de novo* review of recommendations produced delays.¹⁵⁴ Moreover, the Court "impose[d] punishment on errant judges which [was] totally different from that recommended by the people who [had] actually heard the evidence."¹⁵⁵

Reformers wanted to change the disciplinary process to address these concerns. They had to act cautiously, however, because they knew that a disciplinary board with too much power and independence may threaten judicial independence.¹⁵⁶ Thus, the 1993 amendments represented an attempt to promote judicial accountability without threatening judicial independence.¹⁵⁷

(c) *The 1993 Amendments*—The Judicial Conduct Board serves as an investigatory/prosecutory agency. It receives and investigates complaints and may initiate investigations on its own initiative.¹⁵⁸ The Board then determines whether there is probable cause to file formal charges against a judicial officer.¹⁵⁹ The subject of the proceeding must be informed about the investigation and must be given an opportunity to respond before the JCB ascertains the presence of probable cause to file formal charges.¹⁶⁰

If the Board does not find probable cause, it may issue a statement about the case to the complainant or the subject of the proceeding.¹⁶¹

153. *Id.* at 107. The *Fink* case showed that JIRB proceedings could take a long time. In that case, more than four years passed from the date the complaint was filed to the date the JIRB recommended removal. Andrew S. Ross, *JIRB Seeks Dismissal of Judge Fink*, PA. L.J.-REP., Mar. 9, 1987, at 1.

154. BECK COMMISSION REPORT, *supra* note 44, at 90. The *Snyder* case showed that disciplinary proceedings could take a long time at the Supreme Court level. In that case, almost two years passed from the date of the JIRB recommendation of removal to the date of the Supreme Court's decision. *Snyder v. Commonwealth State Employees' Retirement Bd.*, 562 A.2d 1000 (Pa. 1989), *rev'd*, 621 A.2d 563 (Pa. 1993) (*per curiam*). See also *Supreme Ct. Bars Ex-judge from Further Judicial Office*, PA. L.J.-REP., Mar. 30, 1987, at 9.

155. LEGIS. J. NO. 50-SENATE, 176th General Assembly, 1992 Sess. 2483 (remarks of Sen. Bortner).

156. LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1519 (remarks of Rep. Broujos).

157. *Id.* at 1515 (remarks of Rep. Broujos).

158. PA. CONST. art. V, § 18(a)(7) (adopted 1993).

159. *Id.*

160. PA. CONST. art. V, § 18(a)(8) (adopted 1993).

161. *Id.* This statement 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 can also send a copy

If it does find probable cause, the Board becomes responsible for prosecuting the jurist before the CJD.¹⁶² If the Board finds probable cause to file formal charges concerning physical or mental disability, the Board must notify the subject of the proceedings and provide "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 CJD."¹⁶³

The CJD makes up the adjudicatory arm of the new disciplinary commission system, acting as a court of record with all the attendant powers and duties.¹⁶⁴ Unlike the JIRB, the court decides whether to impose disciplinary sanctions.¹⁶⁵ To overcome the presumption of innocence, the Board has the burden of proving the charges by clear and convincing evidence.¹⁶⁶ All decisions of the CJD must contain written findings of fact and conclusions of law.¹⁶⁷

The 1993 amendments allow appeals of disciplinary decisions to state courts. The Pennsylvania Supreme Court hears appeals of judges and district justices.¹⁶⁸ A special tribunal composed of seven judges (other than senior judges), chosen from among the judges of the superior and commonwealth courts who do not sit on the JCB or the CJD, presides over the appeal of a Pennsylvania Supreme Court justice.¹⁶⁹ Legislators created the special tribunal because they doubted the effectiveness and objectivity of a system in which Supreme Court justices adjudicate one of their peers.¹⁷⁰

Both the Supreme Court and the special tribunal play the same role. Both judicial bodies function like an appellate court, reviewing the record of the CJD proceedings rather than considering the case *de novo*.¹⁷¹

of information or evidence acquired in the course of the investigation.

162. PA. CONST. art. V, § 18(a)(7) (adopted 1993).

163. PA. CONST. art. V, § 18(a)(9) (adopted 1993). Presumably, entering a rehabilitation program would not necessarily preclude disciplinary action.

164. PA. CONST. art. V, § 18(b)(5) (adopted 1993).

165. *Id.*

166. *Id.*

167. *Id.*

168. PA. CONST. art. V, § 18(c)(1) (adopted 1993).

169. *Id.*

170. *See, e.g.*, LEGIS. J. NO. 1-SENATE, 177th General Assembly, 1993 Sess. 207 (remarks of Sen. Greenleaf).

171. PA. CONST. art. V, § 18(c)(2) (adopted 1993). This provision states:

On appeal, the Supreme Court or special tribunal shall review the record of the proceedings of the [CJD] 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

The 1993 amendments also provide for judicial review of the disciplinary commission's failure to discipline a judicial officer. The JCB may appeal such a decision to the Supreme Court or the special tribunal, as appropriate, but this appeal may only address questions of law.¹⁷²

According to the 1993 amendments, a jurist who is the complainant, the subject of the complaint, a party, or a witness, is prohibited from participating as a member of the JCB, the CJD, the Supreme Court, or the special tribunal.¹⁷³ The 1968 Constitution only prohibited a judicial officer who was the subject of the complaint from participating on the JIRB or the Supreme Court.¹⁷⁴

3. *Confidentiality*—The 1968 Constitution strictly limited public information about disciplinary proceedings unless and until the JIRB recommended disciplinary action. The 1993 amendments opened the disciplinary process to greater public scrutiny.

(a) *The 1968 Constitution*—The 1968 version of section 18 stated that “all papers filed with and proceedings before the [JIRB] 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.”¹⁷⁵

The JIRB originally filed the records of all cases with the Supreme Court, regardless of whether the Board recommended disciplinary action. The Board changed its practice in 1983, only filing the record in cases where it recommended disciplinary sanctions.¹⁷⁶ The United States Court of Appeals for the Third Circuit upheld this practice in *First Amendment Coalition v. Judicial Inquiry and Review Board*.¹⁷⁷

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.

Id.

172. PA. CONST. art. V, § 18(c)(3) (adopted 1993).

173. PA. CONST. art. V, § 18(c)(4) (adopted 1993).

174. PA. CONST. art. V, § 18(i) (adopted 1968, repealed 1993).

175. PA. CONST. art. V, § 18(h) (adopted 1968, repealed 1993). For a scholarly analysis of the arguments for and against strict confidentiality rules in the disciplinary process, see Jeffrey M. Shaman & Yvette Begue, *Silence Isn't Always Golden: Reassessing Confidentiality in the Judicial Disciplinary Process*, 58 TEMP. L.Q. 755 (1985).

176. *First Amendment Coalition v. Judicial Inquiry & Review Bd.*, 579 F. Supp. 192, 197-98 (E.D. Pa. 1984), *vacated*, 784 F.2d 467 (3d Cir. 1986) (en banc) (Adams, Gibbons, Sloviter & Mansmann, JJ., concurring and dissenting in part).

177. *Id.*

Consequently, if the JIRB did not recommend disciplinary sanctions, its papers and proceedings remained confidential.¹⁷⁸

(b) *Criticisms of the 1968 Constitution*—Perhaps the most severe criticism of the JIRB system resulted from the strict rules on confidentiality. The Pennsylvania Supreme Court expressed concern about the potential for abuse, noting that the rules on confidentiality could allow the Board to harass and intimidate justices and judges.¹⁷⁹

Few legislators, however, feared that the rules on confidentiality shielded an overly-aggressive Board from public view. Instead, they feared that misconduct was being swept under the rug.¹⁸⁰ Consequently, reducing the secrecy of JIRB proceedings became one of the key goals of the reform movement.¹⁸¹

(c) *The 1993 Amendments*—Complaints filed with or initiated by the JCB, statements, documents, and other information or evidence acquired in the course of an investigation do not constitute public information.¹⁸² Unless the subject of the proceeding waives confidentiality, Board proceedings remain confidential.¹⁸³

If, independent of any Board action, the public becomes aware of a Board investigation, the subject of the proceeding may direct the JCB to 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.”¹⁸⁴ This provision solved a problem that the JIRB faced under the 1968 Constitution: the strict rules on confidentiality

178. The courts rejected attempts to obtain access to JIRB records. See, e.g., *In re Subpoena on Judicial Inquiry & Review Bd.*, 517 A.2d 949 (Pa. 1986). The courts also refused to make JIRB proceedings and records public. See, e.g., *Application of Surrick*, 470 A.2d 447 (Pa. 1983). See also Bonnie S. Greenberg, *Pennsylvania Constitution Prohibits State Supreme Court from Compelling Production of the Judicial Inquiry and Review Board's Confidential Records*, 57 TEMP. L.Q. 407 (1984).

179. *In re Chiovero*, 570 A.2d 57 (Pa. 1990).

180. LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1517 (remarks of Rep. Piccola).

181. LEGIS. J. NO. 4-HOUSE, 177th General Assembly, 1993 Sess. 62 (remarks of Rep. Piccola); LEGIS. J. NO. 50-SENATE, 176th General Assembly, 1992 Sess. 2481 (remarks of Sen. Greenleaf).

182. PA. CONST. art. V, § 18(a)(8) (adopted 1993).

183. *Id.*

184. *Id.*

prevented the JIRB from responding to statements about a proceeding. This restriction even applied to misleading or inaccurate statements.¹⁸⁵

Thus, the 1993 amendments set forth exceptions to the general rule which keeps proceedings confidential until the filing of formal charges with the Court of Judicial Discipline. After the filing of charges, the 1993 amendments provide for public access to the disciplinary process. Formal charges constitute matters of public record,¹⁸⁶ and all hearings before the court constitute public proceedings.¹⁸⁷

4. *Applicability of the Disciplinary Commission System*—The 1968 Constitution created a judicial discipline commission system to address the misconduct and disability of justices and judges. That constitution also empowered the Supreme Court to “prescribe rules of procedure for the suspension, removal, discipline and compulsory retirement of justices of the peace.”¹⁸⁸ Thus, “[t]he Judicial Inquiry and Review Board [had] no constitutional jurisdiction over justices of the peace The procedure as to justices of the peace [was] based solely on rules of the Supreme Court which [were] subject to change by that court.”¹⁸⁹

The 1993 amendments created a judicial discipline commission system that applies to justices of the peace as well as to justices and judges.¹⁹⁰ Many reform bills included language to make the disciplinary commission system apply to justices of the peace as well as to justices and judges,¹⁹¹ but the legislative debates rarely mention this proposal. The Beck Commission report similarly endorsed the idea with little discussion.¹⁹² The minimal discussion of this issue may indicate that the overwhelming consensus of opinion favored having one judicial discipline commission system that applies to all judicial officers.

185. BECK COMMISSION REPORT, *supra* note 44, at 101.

186. PA. CONST. art. V, § 18(b)(5) (adopted 1993).

187. *Id.*

188. PA. CONST. art. V, § 18(k) (adopted 1968, repealed 1993). In fact, the Supreme Court promulgated rules that made justices of the peace subject to the JIRB system. *See, e.g.*, Rules of Procedure Governing the Judicial Inquiry and Review Board, Rule 23 (defining “judge” as including justices of the peace).

189. WOODSIDE, *supra* note 2, at 439.

190. *See, e.g.*, PA. CONST. art. V, § 18(d)(1) (adopted 1993) (specifying the reasons for which a justice, judge, or justice of the peace may be disciplined under section 18).

191. *See, e.g.*, S. 1000, 1991 Sess.; H.R. 1, 1991 Sess.; S. 1, 1989 Sess.; H.R. 539, 1989 Sess.; S. 1399, 1988 Sess.; S. 1, 1987 Sess.; S. 1, 1985 Sess.; H.R. 489, 1985 Sess.; H.R. 846, 1983 Sess.

192. BECK COMMISSION REPORT, *supra* note 44, at 83.

5. *Grounds for Imposing Disciplinary Sanctions*—The 1968 version of Article V, section 18 provided that a justice or judge could be suspended, or removed from office, or otherwise disciplined for: (1) misconduct in office; (2) neglect of duty; (3) failure to perform his duties; (4) conduct which prejudices the proper administration of justice or brings the judicial office into disrepute; or (5) violations of Article V, section 17.¹⁹³

In the *Dalessandro* case, the Pennsylvania Supreme Court held that the constitution and the Canons of Judicial Ethics only apply to: (1) a judge's conduct in an official capacity; (2) other conduct that affects the judge while acting in an official capacity; and (3) conduct prohibited by law.¹⁹⁴ That decision was one of the first which attracted legislative interest in judicial discipline.¹⁹⁵ Therefore, one of the earliest goals of the reform movement was to alter the grounds for imposing judicial discipline.¹⁹⁶

The 1993 amendments effectively reverse the *Dalessandro* decision by stating that one reason for imposing discipline on a judicial officer is "conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct

193. PA. CONST. art. V, § 18(d) (adopted 1968, repealed 1993). Article V, section 17 provided:

(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.

Id. The 1993 amendments did not change this section.

194. Matter of *Dalessandro*, 397 A.2d 743 (Pa. 1979) (per curiam).

195. See *supra* note 13 and accompanying text.

196. Two reform bills from the 1983-1984 legislative session included language to reverse this decision. S. 1100, 1983 Sess.; H.R. 1996, 1984 Sess. Such language was common in reform bills by the 1985-1986 session. See S. 1, 1985 Sess.; S. 842, 1985 Sess.; H.R. 260, 1985 Sess.; H.R. 489, 1985 Sess.; H.R. 2451, 1986 Sess.

occurred while acting in a judicial capacity or is prohibited by law."¹⁹⁷

In addition to reversing the *Dalessandro* decision, the 1993 amendments greatly expand the constitutional grounds for imposing discipline on justices of the peace. Section 18's list of reasons for imposing discipline, which formerly applied only to justices and judges, now applies to justices of the peace as well.¹⁹⁸ The 1993 amendments also specify new grounds for imposing discipline under section 18. The constitution now specifically states that a judicial officer who receives a conviction for a felony or for conduct that violates a canon or rule prescribed by the Supreme Court is subject to disciplinary measures.¹⁹⁹

6. *Orders in Cases Involving Judicial Misconduct*—The 1968 Constitution listed the types of disciplinary orders that the Supreme Court could issue against a justice or judge engaged in misconduct. That constitution, however, failed to specify the types of orders that the Court could issue while charges were pending against a justice or judge. The 1993 amendments list additional options for the Court of Judicial Discipline, both before and after finding that a jurist has engaged in misconduct.

(a) *The 1968 Constitution*—The Supreme Court had authority to suspend, remove, or otherwise discipline²⁰⁰ a judicial officer who engaged in misconduct.²⁰¹ An order of suspension or removal carried with it an immediate loss of salary.²⁰² In addition, an order of removal resulted in a permanent ban on holding judicial office.²⁰³ While a suspension order could require the forfeiture of office, it did not permanently bar the individual from holding judicial office.²⁰⁴

(b) *Criticisms of the 1968 Constitution*—The Supreme Court promulgated rules in 1986 for the emergency suspension of justices and

197. PA. CONST. art. V, § 18(d)(1) (adopted 1993).

198. *Id.*

199. *Id.*

200. Other forms of discipline included reprimanding the judicial officer, *see* *Matter of Larsen*, 616 A.2d 529 (Pa. 1992) (*per curiam*), *cert. denied*, 114 S. Ct. 65 (1993), and, possibly, limiting the jurist's activities. *See In re Greenberg*, 280 A.2d 370 (Pa. 1971), *vacated*, 318 A.2d 740 (Pa. 1974) (Eagen & Pomeroy, JJ., dissenting) (rather than suspending a judge, three justices believed that he should have been limited to administrative functions and voluntary settlement conferences).

201. PA. CONST. art. V, § 18(d) (adopted 1968, repealed 1993).

202. PA. CONST. art. V, § 18(h) (adopted 1968, repealed 1993).

203. PA. CONST. art. V, § 18(l) (adopted 1968, repealed 1993).

204. *Matter of Cunningham*, 538 A.2d 473 (Pa. 1988), *appeal dismissed*, 488 U.S. 805 (1988).

judges.²⁰⁵ Under these rules, the judicial officer received full salary during the suspension.

Many people objected to paying the salaries of suspended justices and judges under such circumstances.²⁰⁶ For example, one editorial likened a paid suspension to a vacation.²⁰⁷ The public outcry following the Roofers Union scandal decided the legislative battle over this issue.²⁰⁸ That scandal caused fifteen Philadelphia Court of Common Pleas judges to be suspended with pay for more than six months.

(c) *The 1993 Amendments*—The 1993 amendments empower the CJD to order removal from office, suspension with or without pay, censure, or other discipline if the CJD finds a jurist engaged in misconduct.²⁰⁹ If the court orders suspension or removal, that order takes effect immediately; the judicial officer loses his or her office and salary prior to an appeal before the Supreme Court or the special tribunal.²¹⁰

Additionally, the 1993 amendments grant the Court of Judicial Discipline constitutional authority to order the interim suspension of a judicial officer “against whom formal charges have been filed with the [CJD] by the board or against whom has been filed an indictment or

205. 16 Pa. Bull. 4950 (1986). The Supreme Court promulgated new rules of procedure for the JIRB in late 1992. 22 Pa. Bull. 5592 (1992). According to the JIRB’s executive director, these new rules demonstrated the willingness of the JIRB and the court to respond to criticisms while still staying within the bounds set by the 1968 Constitution. John L. Kennedy, *Judicial Discipline Changes Unlikely to Alter Legislation*, PA. L.J., Dec. 7, 1992, at 6.

An alternative to suspension was to limit the judge’s activities while a disciplinary case was pending. For example, the Court could assign judges to administrative and other non-judicial duties until disciplinary actions were resolved. See *Fink v. Supreme Court of Pennsylvania*, 651 F. Supp. 1238 (M.D. Pa. 1987).

206. LEGIS. J. NO. 25-SENATE, 171st General Assembly, 1987 Sess. 355 (remarks of Sen. Bell).

207. Andrew S. Ross, *Suspend Pay of Suspended Judges*, PA. L.J.-REP., Feb. 16, 1987, at 2 (editorial).

208. *Judicial Reform: Senate Approves Amendment*, PA. L.J.-REP., April 13, 1987, at 1. See also LEGIS. J. NO. 25-SENATE, 171st General Assembly, 1987 Sess. 355 (remarks of Sen. Bell) (“we do have in one part of Pennsylvania some fifteen judges who have not been working for six months who are still getting pay, and my people in my county are in revolt against such an idea.”).

209. PA. CONST. art. V, § 18(b)(5) (adopted 1993).

210. PA. CONST. art. V, § 18(d)(1) (adopted 1993). This provision raises a host of interesting questions. For example, if a removal decision is reversed on appeal, should the judge be compensated for the period he or she was suspended? How is that period treated for retirement purposes? Does the governor have authority to fill the vacant position on the bench while an appeal is pending? The courts will need to answer these questions, since the 1993 amendments do not do so explicitly.

information charging a felony.”²¹¹ This authority explicitly includes the authority to suspend a judicial officer without pay.²¹² Interim suspension orders are not appealable.²¹³

7. *Orders in Cases Involving a Disability*—In addition to its use in cases involving judicial misconduct, the JIRB system applied to cases involving physically or mentally disabled justices or judges. The Supreme Court could order a justice or judge “[to retire] for disability seriously interfering with the performance of his duties.”²¹⁴

The 1993 amendments articulate a wide range of options available to the CJD in cases involving a disabled justice, judge, or justice of the peace. The court may order the judicial officer’s removal, suspension, or retirement²¹⁵ or impose “other limitations on the activities” of the judicial officer.²¹⁶

8. *Provisions that Remain Virtually Unchanged*—The 1993 amendments include several important provisions found in the 1968 version of section 18. The new section 18 states that “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.”²¹⁷ The 1968 Constitution included virtually identical language.²¹⁸

The new section 18, also like the 1968 version, provides for the automatic forfeiture of judicial office if a justice or judge files for nomination or election to any public office other than a judicial office.²¹⁹ The 1993 amendments, however, extend this provision to justices of the peace.²²⁰

Finally, the 1993 amendments parallel the 1968 Constitution in that both versions explicitly state that the judicial discipline commission

211. PA. CONST. art. V, § 18(d)(2) (adopted 1993).

212. *Id.*

213. *Id.*

214. PA. CONST. art. V, § 18(d) (adopted 1968, repealed 1993).

215. PA. CONST. art. V, § 18(d)(1) (adopted 1993).

216. *Id.*

217. PA. CONST. art. V, § 18(d)(3) (adopted 1993).

218. PA. CONST. art. V, § 18(1) (adopted 1968, repealed 1993).

219. PA. CONST. art. V, § 18(m) (adopted 1968, repealed 1993); PA. CONST. art. V, § 18(d)(4) (adopted 1993).

220. PA. CONST. art. V, § 18(d)(4) (adopted 1993).

system acts as an addition to, rather than a substitute for, impeachment.²²¹

B. Section 16

The 1968 version of Article V, section 16, relating to compensation and retirement of justices, judges, and justices of the peace, contained one sentence addressing the compensation of removed and suspended judicial officers. Specifically, section 16(b) stated that "[n]o compensation shall be paid to any justice, judge or justice of the peace who is suspended or removed from office under section eighteen of this article or under article six."²²² This provision became the subject of extensive litigation during the 1980s as the State Employees' Retirement Board denied retirement benefits to judges who were removed or suspended. This litigation culminated in *Glancey v. Commonwealth State Employees' Retirement Board*,²²³ in which the Pennsylvania Supreme Court held that suspended or removed judicial officers do not automatically lose their pension benefits. According to the Court,

. . . it was not intended that this Court should strip a judge of retirement benefits each time it imposes removal under the JIRB provisions, without any regard for the nature or severity of the conduct at issue. . . . Given the need for flexibility and case-by-case options in the realm of sanctioning judges, the Constitution wisely leaves the distinct issue of pension forfeiture to the legislative branch.²²⁴

Representative David W. Heckler introduced an amendment specifically designed to respond to the *Glancey* decision.²²⁵ Although he believed that the language in the 1968 Constitution was clear, he also believed that the Court had legitimate concerns; given the severity of losing pension benefits, that sanction should not automatically take effect upon the suspension or removal of a judicial officer.²²⁶ The 1993 amendments included Representative Heckler's amendment which specifies the type of conduct that merits this severe sanction.

221. PA. CONST. art. V, § 18(n) (adopted 1968, repealed 1993); PA. CONST. art. V, § 18(d)(5) (adopted 1993).

222. PA. CONST. art. V, § 16(b) (adopted 1968, amended 1993). Article VI provides for the impeachment of judicial officers. See *supra* note 2.

223. 610 A.2d 15 (Pa. 1992).

224. *Id.* at 26 (note and emphasis omitted).

225. LEGIS. J. NO. 47-HOUSE, 176th General Assembly, 1992 Sess. 1522.

226. *Id.*

The 1993 amendments repealed and replaced the relevant sentence in section 16(b). The section now states that, except as provided by law, a judicial officer shall not receive any salary, retirement benefit, or other compensation upon suspension, removal, or bar from holding office for specified reasons.²²⁷ Those reasons include: (1) conviction of a felony; (2) misconduct in office; or (3) conduct which prejudices the proper administration of justice or brings the judicial office into disrepute.²²⁸ This provision applies when either the impeachment process or the judicial discipline commission system removes the judicial officer.²²⁹

IV. Conclusion

In May 1993, Pennsylvania's voters approved constitutional amendments concerning judicial discipline. Those amendments made significant changes in the state's judicial discipline commission system, yet they should not be viewed as a major break with the past. Rather, they should be viewed as steps in the evolutionary process.

Pennsylvania has long had several formal and informal methods of imposing discipline on judicial officers. The Constitution of 1968 created a judicial discipline commission system in response to the shortcomings of earlier disciplinary devices. Over time, however, people began to believe that the disciplinary commission system created in 1968 had its own shortcomings. Judges formed a majority on the commission. A single commission investigated complaints, held hearings, and recommended discipline. Commission proceedings were covered by a veil of secrecy. The criticisms of the JIRB system went on and on.

The 1993 amendments attempted to address the shortcomings of the previous system. The amendments did not discard the judicial discipline commission system, they adapted it to better suit the unique environment of Pennsylvania state government. Viewed from this perspective, the extinction of the JIRB and the appearance of the JCB and CJD are simply links in the evolutionary chain.

Pennsylvania's judicial discipline system will probably continue to evolve in the future. The 1993 amendments, after all, were a compromise; they did not create a perfect system, but they were the most that was politically possible at the time.²³⁰ Those amendments

227. PA. CONST. art. V, § 16(b) (amended 1993).

228. *Id.*

229. *Id.*

230. See LEGIS. J. NO. 4-HOUSE, 177th General Assembly, 1993 Sess. 63 (remarks of Rep.

no doubt represent a significant step forward, but they probably do not represent the final word on judicial discipline in Pennsylvania.

Kukovich).