

History of the Judicial Disciplinary Process in Pennsylvania

Early Methods of Disciplining Judges

The Pennsylvania Constitution has always provided for the removal of public officials, including judicial officers, through the process of impeachment and trial of impeachment. That process vests in the House of Representatives the sole power to impeach and requires the Senate to conduct a trial of the impeachment. Article VI, §5 of the Constitution requires the concurrence of at least two-thirds of the Senate members “present” to convict an impeached public official.

Beginning as early as 1776, the legislature of the Commonwealth anticipated, and provided for, the removal of judicial officers by the legislature, through a means other than impeachment. The Constitution of 1776 provided that the General Assembly at any time could remove “judges” of the Supreme Court for “misbehavior.” The Constitution of 1790 altered that provision by providing for *gubernatorial* removal of judges of the Courts of Common Pleas as well as Supreme Court justices upon “address” by a two-thirds vote of each branch of the legislature, when such conduct provided “reasonable cause” for removal.^[1]

Article V, §15 of the Constitution of 1874 similarly allowed for removal “upon address” and provided:

All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on address of two-thirds of each House of the General Assembly.

Both the 1790 and 1874 provisions are extraordinary specimens of ambiguity. Address is no longer a viable method for removing members of the judiciary. Article V, §7 of the Constitution now excludes judicial officers from those public officials subject to removal upon address.

In addition to impeachment and address, beginning with the Constitution of 1838, certain public officials, including judicial officers have been subject to removal upon “conviction of misbehavior in office or of an infamous crime.” Article V, §7 of the Constitution.

Before the adoption of the 1968 Constitution, the Supreme Court itself probably had the power to remove a judicial officer through the exercise of its inherent powers to supervise the judicial system.^[2]

However, whatever inherent powers that Court might have possessed, or continues to possess, case law suggests that the Court itself has regarded its powers as limited, for in two very early decisions, the Supreme Court held that the specific constitutional provisions pre-dating the 1968 Constitution, namely impeachment, address, and forfeiture of office for misbehavior in office or conviction of an infamous crime, provided the exclusive means for removal of judicial officers. Commonwealth v. Gamble, 62 Pa. 343 (1869); Bowman’s Case, 74 A. 203 (1909).

The Creation of the Judicial Inquiry and Review Board

The Pennsylvania Constitution of 1968 established a specific mechanism for the discipline of judicial officers, independent of the legislature, governor or trial court.^[3] The pertinent provisions, found in former Article V, §18, created the Judicial Inquiry and Review Board, which had the duty and authority to investigate reports of judicial misconduct, as well as to prosecute and adjudicate them. The flaw most obvious in the pre-1968 Constitutional system, and which provided a disincentive to implementing any of the earlier provisions, was the lack of any mechanism for imposing less serious disciplinary consequences than removal upon a judicial officer who had engaged in improper judicial conduct. The 1968 Constitution empowered the Judicial Inquiry and Review Board to impose sanctions less severe than removal from office.

The board was composed of nine members: three judges of the Courts of Common Pleas (from different judicial districts), and two judges of the Superior Court, all of whom were 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 were selected by the governor. Members served four-year terms.

The board investigated, prosecuted and adjudicated the charges against the judicial officer.^[4] The board's adjudication, however, consisted only of recommendations to the Supreme Court whose review was entirely de novo.

The Creation of the Two-Tier System of Judicial Discipline in Pennsylvania

In 1993, the citizens of the Commonwealth approved the legislature's adoption of an amendment to our Constitution. The amendment, adopted on May 18, and effective August 11, abolished the Judicial Inquiry and Review Board and created the Judicial Conduct Board, which is responsible for the investigation and prosecution of charges of judicial misconduct, and the Court of Judicial Discipline, which performs the adjudicatory function.^[5]

The Judicial Conduct Board

Composition

The Judicial Conduct Board is composed of 12 members, of whom six are appointed by the governor and six by the Supreme Court. The Constitution provides that the Supreme Court shall appoint one judge from either the Superior Court or the Commonwealth Court, one district justice, one lawyer and three non-lawyer electors. The Governor's appointees include one judge from the Courts of Common Pleas, two lawyers and three non-lawyer electors. No more than half of the members appointed by either authority may be registered in the same political party.

Powers and Duties

Article V, §18(a)(7) of the Constitution sets forth the general powers and duties of the Judicial Conduct Board. Among the primary responsibilities of the Board are:

- to receive and investigate complaints regarding judicial conduct filed by individuals or initiated by the Board,
- to determine whether probable cause exists to file formal charges against a judicial officer, and

- to present its case in support of the filed charges before the Court of Judicial Discipline.

Thus, the board acts in a manner similar to a prosecutor in a criminal action.

Confidentiality

All proceedings of the Judicial Conduct Board are confidential until the board files formal charges with the Court of Judicial Discipline unless the judicial officer under investigation elects to waive confidentiality.[6] All proceedings in the Court of Judicial Discipline are open to the public.

The Court of Judicial Discipline

Composition

The Court of Judicial Discipline is composed of eight members, four of whom are appointed by the Supreme Court and four of whom are appointed by the governor. No more than two of the members appointed by each appointing authority may be of the same political party. Membership is further broken down as follows:

Supreme Court appointees:

- 2 judges of the Common Pleas, Superior or Commonwealth Courts
- 1 magisterial district judge
- 1 non-lawyer elector

Gubernatorial appointees:

- 1 judge of the Common Pleas, Superior or Commonwealth Courts
- 1 non-lawyer elector
- 2 non-judge members of the bar

Powers and Duties

Article V, §18(b)(5) of the Constitution provides that, upon the filing of charges with the court by the Judicial Conduct Board, the court shall promptly schedule a hearing to determine whether a sanction should be imposed against the judicial officer. The Constitution provides that the court shall be a court of record and all proceedings shall be a matter of public record. All hearings shall be public proceedings conducted pursuant to 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 rules adopted by the court and shall have the right to subpoena witnesses and to compel the production of documents. The charged judicial officer shall be presumed innocent and the Judicial Conduct Board shall have the burden of proving the charges by clear and convincing evidence.

Article V, §18(d)(1) provides that a judicial officer may be suspended, removed from office or otherwise disciplined for conviction of a felony; violation of Section 17 of Article V; 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 magisterial district judge, the court may enter an order of removal from office, retirement, suspension or other limitations on the activities of the justice or judge as warranted by the record. Upon a final order of the court for suspension without pay or removal, prior to any appeal, the justice or judge shall be suspended or removed from office; and the salary of the justice or judge shall cease from the date of the order.

The Constitutional Amendment, at Article V, §18(d)(2), empowers the Court of Judicial Discipline to issue an interim order prior to a hearing directing the suspension, with or without pay, of any judicial officer 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.

On appeal, as mentioned, the Supreme Court’s review of the decision of the Judicial Inquiry and Review Board has been de novo. The 1993 Amendment imposes a much more narrowly defined scope of review. Article V, §18(c)(2) provides that on appeal the Supreme Court shall review the record 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 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 shall affirm the order of the court.

[1] There appear to be no decisions that interpret the term “reasonable cause.” The Pennsylvania Supreme Court has referred to address as a method of removal only once, in Com. ex rel. Duff v. Keenan, 347 Pa. 574, 33 A.2d 244 (1943). In that case, the attorney general of the Commonwealth filed a petition in mandamus seeking to compel the performance of judges in Westmoreland County who had allegedly failed to issue decisions in a timely manner. In dicta, the court noted that “[a]ny judge who either by his “sale”, his “denial”, or his delay of justice destroys or prejudices a suitor’s rights subjects himself to removal from office under either of the two methods prescribed in Article VI, §4 of the Constitution of 1874. Id. at 583, 33 A.2d at 249.

[2] Former Article V, §3 of the Constitution placed with the Supreme Court the king’s bench powers. See Carpentertown Coal & Coke Co. v. Laird, 360 Pa. 94, 61 A.2d 426 (1948). In that case the Supreme Court noted “[i]nherent in the Court of the King’s Bench, was the power of general superintendency over inferior tribunals”

[3] The legislature retains its authority to remove by the impeachment process, Pa. Const., Article VI, §§4-6, and the trial courts retain their authority to remove upon conviction of “misbehavior in office or for any infamous crime,” Pa. Const., Article VI, §7.

[4] This is known as a “one-tier” system where all functions are the responsibility of one body.

[5] *Brief History of the Formation of the Court of Judicial Discipline 1993 – 1994* is available upon request.

[6] Sometimes, despite the confidentiality of the proceedings, there is speculation in the media that a particular judicial officer is under investigation by the Judicial Conduct Board. In such cases the judicial officer may wish to waive confidentiality and confirm that an investigation is underway in order to publicly confront the speculative reports.