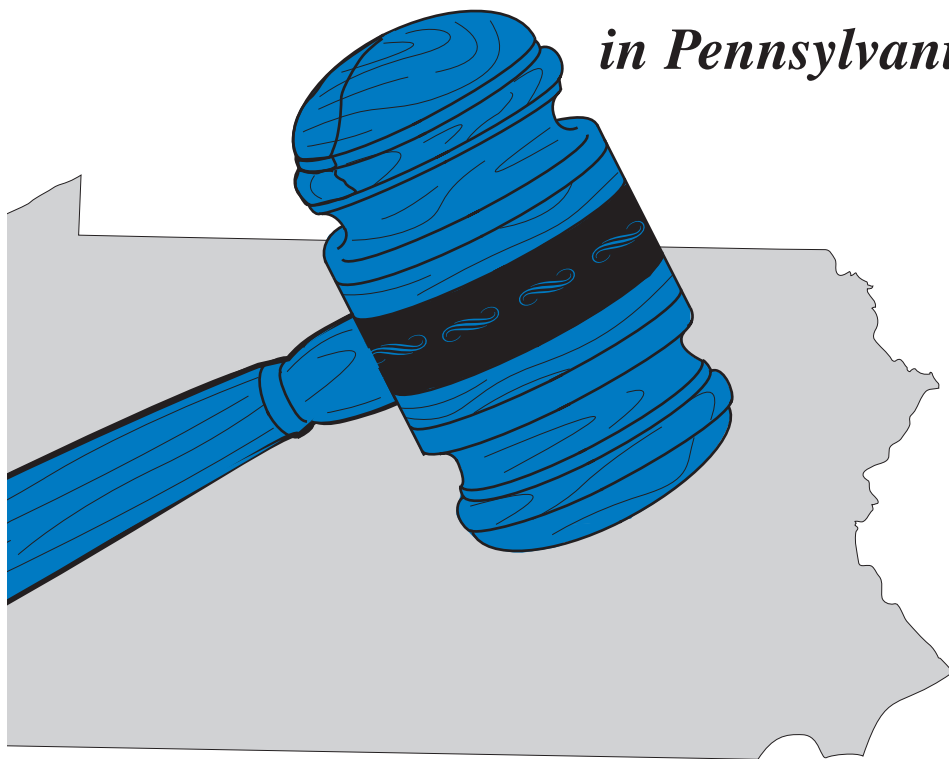

The Judicial Discipline Process

in Pennsylvania



A Citizen's Guide



On May 18, 1993, the voters of Pennsylvania approved an amendment to the Pennsylvania Constitution that created a new system for investigating and, if appropriate, disciplining members of the state's judiciary accused of misconduct.

This brochure is designed to acquaint citizens with the workings of the judicial discipline system and to serve as a guide to making the easiest and most efficient use of that system.

Hopefully there will be few instances where judges act improperly. However, a strong and effective method for disciplining those who do is critical to maintaining public confidence in the integrity of the judiciary and the entire judicial process.



Overview of the Judicial Discipline Process

Citizen's Complaint



Judicial Conduct Board

The Board investigates complaints of judicial misconduct and, if warranted, files formal charges against an accused judge with the Court of Judicial Discipline.



Court of Judicial Discipline

The Court hears formal charges brought against a judge by the Board and decides whether or not to impose discipline, and if so, what that discipline should be.



Pennsylvania Supreme Court/Special Tribunal

The Pennsylvania Supreme Court hears appeals of Court of Judicial Discipline rulings, except appeals involving Supreme Court justices, which are heard separately by a Special Tribunal.

The Judicial Discipline Process in Pennsylvania: A Citizen's Guide

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Before Filing a Complaint

What kinds of allegations will the Board consider?

The Judicial Conduct Board (“Board”) does not have the authority to consider all allegations involving judges. It is important to understand this before you file a complaint.

The Board will not review or change any legal ruling or pass judgment on a judge's exercise of discretion **regardless of the correctness of that ruling or exercise of discretion**. These complaints of “legal error” can only be considered by courts created by the Constitution to hear cases on appeal.

There are, however, many types of conduct that the Board will consider. Generally speaking, these fall into two categories:

1. **Ethical Misconduct.** Most complaints brought to the Board fit within this category, which covers a broad range of improper or unprofessional behaviors. Since there is no precise definition of what will be considered “ethical misconduct,” you have to make that determination for yourself. This is not always easy to do. For guidance, you might review examples of conduct that the Board has found to warrant discipline. These include:

- Committing a crime
- Extreme and unjustifiable delay in deciding cases
- Inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias or racial slurs
- Improper *ex parte* communication with a party or attorney
- Making public comments about a pending case
- Abuse of power or threat to abuse power
- Failure to disclose facts relevant to appearance of partiality
- Accepting football tickets from a litigant in a pending case
- Being intoxicated on the bench
- Operating illegal video poker machines
- Sexual harassment

2. **Mental or Physical Disability.** This means that a judge is either mentally or physically unable to perform the duties of a judge.

Can I file a complaint against *any* Pennsylvania judge?

The Board will only consider complaints against the following:

- **Pennsylvania Supreme Court Justices**
- **Superior and Commonwealth Court Judges**
- **Common Pleas Court Judges**
- **Philadelphia Municipal and Traffic Court Judges**
- **Pittsburgh City Magistrates**
- **District Justices**

The Board will not consider complaints against the following (even if they work in Pennsylvania):

- Individuals who perform judicial or quasi-judicial functions such as divorce masters, arbitrators, workers' compensation judges or administrative law judges
- Individuals who work for the court system such as court administrators, clerks or prothonotaries
- Federal judges such as circuit court judges, district judges, magistrate judges and bankruptcy judges
- Elected officials who are not judges
- Attorneys

Will the Board consider complaints against former judges?

If the judge against whom you have a complaint is no longer on the bench, the Board still may consider your complaint as long as it involves conduct that occurred while the judge **was** on the bench.

Are there any time limits on the filing of complaints?

The Board generally will not consider any complaint where the alleged misconduct took place more than four years before the complaint was filed. If the allegations involve a pattern of recurring misconduct, the Board may consider earlier acts provided that the last episode occurred within four years of the filing of the complaint.

Filing a Complaint

How do I file a complaint?

Anyone can file a complaint free of charge. You do not need a lawyer to file a complaint against a judge. To begin the complaint process, contact the Judicial Conduct Board to request a Complaint Form. Complaint Forms also are available on the Board's website, **www.jcbpa.org**. All complaints must be made in writing. No complaints will be taken over the telephone.

**Judicial Conduct Board
Commonwealth of Pennsylvania
Pennsylvania Place
301 Chestnut Street, Suite 403
Harrisburg, PA 17101
(717) 234-7911
www.jcbpa.org**

What does the Complaint Form ask?

All complaints must identify the judge against whom the complaint is being filed and specify the allegations upon which the complaint is based. If a court case is involved, you should provide information related to the case, such as the case name and number and names of lawyers involved. You may also send the Board copies of documents to support your allegations; these documents will not be returned to you. Space is provided to describe the allegations on which the complaint is based. You should give the Board as much information as possible. This will facilitate the Board's handling of the complaint and expedite the process.

Anyone who knowingly files a false complaint may face criminal charges.

Do I have to identify myself when I file a complaint?

No, but it is strongly encouraged that you do. The Board accepts anonymous complaints, but finds it much more difficult to investigate them.

The Judicial Conduct Board

Who sits on the Board?

The Judicial Conduct Board consists of three judges, three lawyers and six non-lawyers. Half of the Board members are chosen by the Governor, the other half by the Pennsylvania Supreme Court.

What does the Board do once a complaint is received?

The first step in the discipline process involves a preliminary inquiry into a complaint by the Board's staff. During this stage, you or other witnesses may be interviewed, and documents other than those provided with your complaint may be reviewed. Once there is sufficient information to conclude the preliminary inquiry, the full Board will review the complaint.

At this stage, the Board likely will make one of two choices:

- Authorize a full investigation to determine if there is “clear and convincing evidence” of misconduct that warrants disciplinary action against the accused judge; or
- Dismiss the complaint because it is clear that the allegations do not warrant disciplinary action against the accused judge.

A full investigation involves witness interviews, document reviews and an opportunity for the accused judge to respond to the allegations. Following the conclusion of the investigation, the Board will make one of two choices:

- Find that there is “clear and convincing evidence” of judicial misconduct and file formal charges against the accused judge with the Court of Judicial Discipline; or
- Dismiss the complaint because there is not “clear and convincing evidence” of judicial misconduct.

Special procedures may be followed in cases where the Board investigates complaints alleging misconduct involving substance

abuse. In such cases, the Board may permit the accused judge to enter a rehabilitative program prior to the filing of formal charges with the Court of Judicial Discipline. If the judge successfully completes the rehabilitative program, the Board will continue the matter for a twelve-month probationary period. If the Board finds the rehabilitative program and probationary period to have been satisfactorily completed, the Board will not file formal charges with the Court of Judicial Discipline but instead will dismiss the complaint with a letter of counsel.

Are complaints to the Board confidential?

Documents (including complaints) and evidence obtained by the Board are confidential. The Board and its staff will not answer any questions about the existence or status of a complaint. During the preliminary inquiry, the accused judge often does not even know about a pending complaint.

If the Board decides to conduct a full investigation, the accused judge will be notified and afforded an opportunity to respond to the charges. The Board determines whether or not to identify the complainant to the judge.

Even if the Board discloses no information, the fact that the Board is conducting an investigation sometimes becomes known to the public. If this happens, the accused judge can request that the Board issue a statement to confirm an ongoing investigation, clarify the procedural aspects of the proceedings, explain the judge's right to a fair hearing and provide the judge's response to the complaint.

Does the Board talk to the accused judge?

Sometimes the Board wants to hear from the accused judge. If so, the Board can compel the judge to testify by issuing a subpoena.

Are Board proceedings open to the public?

Generally speaking, no. Almost all Board meetings and proceedings are closed to the public. This protects complainants from retaliation by accused judges and protects judges from the embar-

rassment of complaints that are without merit. An accused judge can waive confidentiality with respect to Board discussions involving that judge's individual case, but this rarely happens.

How long does it take before the Board makes a decision on a complaint?

There are no fixed time limits within which the Board must act on a complaint. This is primarily because it is hard to pinpoint how long an investigation will take.

Do I have any right to appeal if the Board dismisses my complaint?

No. You will be notified if the Board dismisses your complaint, but the Board's decision is final and cannot be appealed. If it later turns out that the accused judge has misrepresented or knowingly hidden information or in any way obstructed a Board investigation, the Board may reinvestigate the allegations raised in your complaint. This also can happen if other complaints alleging similar misconduct by the same judge are filed within two years after the Board dismisses your complaint.

The Court of Judicial Discipline

Who sits on the Court?

The Court of Judicial Discipline ("Court") consists of four judges, two lawyers and two non-lawyers. Half of the Court members are chosen by the Governor, the other half by the Pennsylvania Supreme Court.

How does a case come before the Court?

A case comes before the Court only if the Board decides to file formal charges against a judge.

What does the Court do once formal charges are filed?

The Court operates like a regular trial court and holds hearings on charges brought by the Board. The Board's Chief Counsel acts as a "prosecutor" and presents the case in support of the charges.

Charges must be proved by “clear and convincing evidence.” The Court then decides whether or not discipline is warranted and, if so, what kind of discipline is appropriate.

Are Court proceedings open to the public?

Absolutely. Once a case reaches the Court, it is no longer confidential and all proceedings are open to the public.

Does the identity of a complainant remain confidential once formal charges are filed?

Once formal charges are filed, there is no guarantee that a complainant's identity will remain confidential.

Will I have to testify before the Court?

Possibly. If you have relevant information concerning a complaint, you may be required to testify, by subpoena, if necessary. Often a complainant is the only eyewitness to judicial misconduct and has testimony that is crucial. Although some complainants are unwilling or reluctant to testify, the Board may not be able to prove its case without such testimony.

Does the accused judge have to testify before the Court?

No. The accused judge may testify but is not required to do so.

Once formal charges are filed with the Court, how long does it take before the Court makes its decision?

There is no fixed time limit within which the Court must make its decision.

What kind of discipline can the Court impose?

If the Court finds “clear and convincing evidence” of misconduct, it can impose various types of discipline including:

- Reprimand
- Suspension for a specified time period, with or without pay
- Permanent removal from office

The harsher punishments may result in loss of retirement benefits.

If a judge is found to be either mentally or physically disabled, the Court may order limitations on the judge's activities or retirement from the bench.

Can the Court impeach a judge?

No. Impeachment is not part of the judicial discipline process. According to the Pennsylvania Constitution, the state House of Representatives can impeach a judge for “misbehavior in office.” Articles of impeachment are then presented to the state Senate, whose members decide to either convict or acquit. If convicted, a judge is removed from office and disqualified from holding any future state office of “trust or profit.”

Appealing a Decision of the Court of Judicial Discipline

Can a judge appeal a Court ruling imposing discipline?

Yes. A judge who has been disciplined by the Court of Judicial Discipline has a right to appeal that ruling to the Pennsylvania Supreme Court. If the person disciplined is a justice of the Supreme Court, that justice's appeal will be heard instead by a Special Tribunal of seven judges chosen by lot from the Superior and Commonwealth Courts.

Can I appeal if the Court dismisses the Board's charges?

No. Only the Board can appeal a Court ruling dismissing formal charges against a judge. As with a judge's appeal, the Board's appeal is made to the Supreme Court (or Special Tribunal if the accused judge is a Supreme Court justice).

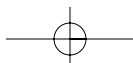
What is the Supreme Court's or Special Tribunal's role in judicial discipline?

The Supreme Court (or Special Tribunal) handles judicial discipline matters in the same way other cases on appeal are handled. Its role is to review what happened before the Court of Judicial



Discipline, such as the conduct of the trial and other questions of law. The Supreme Court (or Special Tribunal) cannot consider new evidence or substitute its own judgment for that of the Court of Judicial Discipline.

Pennsylvanians for Modern Courts gratefully acknowledges Joseph A. Massa, Jr., Chief Counsel for the Judicial Conduct Board, and his staff, for reviewing the information contained in this brochure.



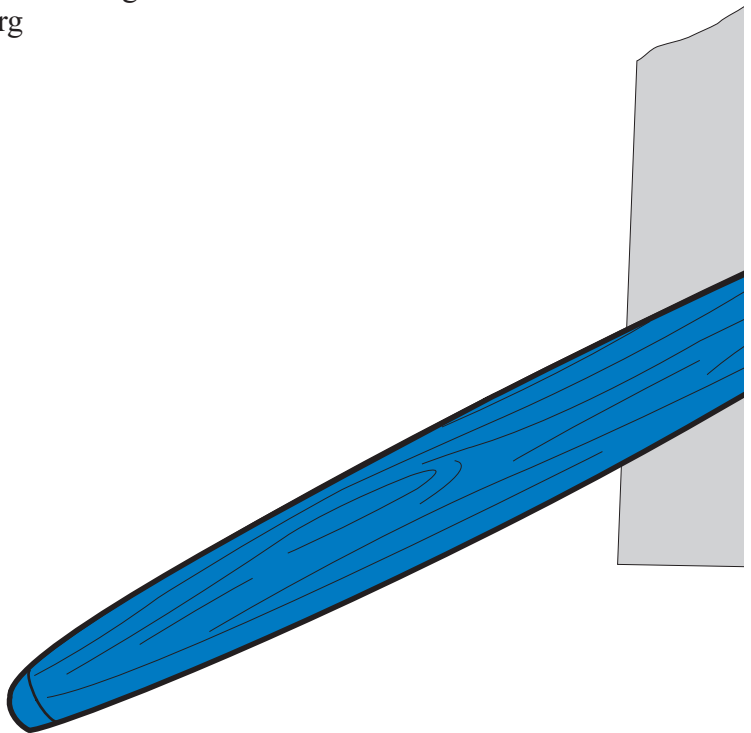
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