

Report of the Work of
The Disciplinary Board of the Supreme Court of Pennsylvania
For the Year 2001

General Statistics

The attorney population has increased dramatically since The Disciplinary Board was created by the Supreme Court in 1972. The number of registered attorneys for the 1972-1973 Fiscal Year was **13,057** as compared to **54,063** registered "active" attorneys through December of 2001. The increase in the number of attorneys has been attributed to the increase in the number of complaints filed with the Board. During the year 2001, **4,738** complaints were filed. An average of **394** complaints were filed monthly. **4,727** complaints were disposed of during the year, of which **3,348** were dismissed as lacking substance. At the start of 2002, **812** active complaints were on hand.

Increase in Annual Fee

With the increase of the annual attorney assessment in 1991 from \$75.00 to \$105.00 and the Board's efforts to establish funds for computerization, leasehold improvements and education, in addition to conservative budgeting and prudent investments, the Board was able to continue its operations for ten (10) years without an additional increase.

In the last ten (10) years, the Disciplinary Board total staff size has increased from 60 full and part-time employees in 1991 to 80 full and part-time employees in 2001. The increase in staff over the last ten years also necessitated larger office space for the four District Offices, as well as the Office of the Secretary and the Office of Chief Disciplinary Counsel.

In April 2001, the Disciplinary Board recommended to the Supreme Court that the annual assessment be increased to \$155.00 for Fiscal Year commencing July 1, 2001. After due consideration, by Order dated May 15, 2001, the Supreme Court directed that the annual assessment be increased to \$130.00. By that same Order, the mailing date for the annual fee forms was advanced to June 18, 2001 and the due date for payment of the annual fees was extended to August 6, 2001.

In the Fall of 2001, the Board requested that our auditors prepare a new updated three year forecast based on the increased fee of \$130.00. The draft forecast was approved by the full Board in February 2002. As you can see from the enclosed graphs, the annual fees represent 92% of Disciplinary Board revenues. Since 1996, the average increase in the number of newly registered attorneys has dropped. If investment income is used to calculate revenues, the new forecast indicates that income will exceed expenses until the year 2004. However, if investment income is not used to determine revenues, expenses will exceed revenues starting in year 2001-2002.

Board Activities

During the year 2001, the Disciplinary Board met six (6) times. All but one (1) of these meetings were two day sessions, combining executive and administrative business. At its executive sessions, the Board adjudicated 53 proceedings involving formal charges. 26 matters were disposed of by three member panels of Board Members who reviewed hearing committee members' recommendations for a Private Reprimand (Rule 208(a)(5) Pa.R.D.E.); and 26 respondents appeared before the Board to receive Private Reprimands. In addition to the regularly scheduled meetings, three member panel of Board Members heard oral argument presented before them in 7 matters. In 2 matters a single Board Member conducted a hearing on a petition to dissolve a temporary suspension and a Three Member Panel conducted a hearing on the appropriate sanction after a finding of contempt by the Supreme Court in 1 matter. Of the 53 major adjudications, 32 were referred to the Supreme Court, together with the Board's Report and Recommendation for public discipline.

Supreme Court Orders

20 Supreme Court Orders for Disbarment on Consent resulted from verified statements submitted by respondents. 10 Supreme Court Orders reinstated previously suspended attorneys (following hearing on a petition for reinstatement). 1 disbarred attorney was reinstated in 2001. The Supreme Court denied 3 petitions for reinstatement, 1 denied after having been suspended, 1 denied after having been disbarred, and 1 denied after having been on inactive status three years or more. In addition, 44 petitions for reinstatement to active status after being inactive more than three years, with no discipline being involved, were granted by the Supreme Court. A tabulation of the disciplinary actions taken since the beginning of the Board's operations in 1972 is set forth on the attached sheet.

Board Committee Activities

Rules Committee

The Rules Committee met and considered amendments to various Pennsylvania Rules of Professional Conduct, Pennsylvania Rules of Disciplinary Enforcement and Disciplinary Board Rules and Procedures.

The Rules Committee published Notices of Proposed Rulemaking in *The Pennsylvania Bulletin* soliciting comments on proposed amendments to the following Rules: §85.10 of the Disciplinary Board Rules and Procedures which would provide that the generally applicable four year period within which complaints must be submitted will be tolled while there is litigation pending that results in a finding of ineffective assistance of counsel or prosecutorial misconduct; Pa.R.D.E. 402 which would permit Chief Disciplinary Counsel to independently contact qualified mental health agencies or programs dealing with alcoholism or substance abuse with a request that the agency or program contact the

respondent-attorney; and §89.71 of the Disciplinary Board Rules and Procedures which would require the scheduling in all cases of a prehearing conference to be held not less than 30 days before a hearing.

In addition to the above proposed amendments, the following rule changes were approved by either the Board or the Supreme Court:

Pa.R.D.E. 217(j) - Established specific law-related activities a formerly admitted attorney may engage in under the supervision of a member in good standing of the Bar of this Commonwealth. Amendment adopted effective December 23, 2000 to persons becoming formerly admitted attorneys and commencing January 1, 2001 to persons who were formerly admitted attorneys on or before December 23, 2000.

Pa.R.D.E. 218(f)(2) – Amended effective April 21, 2001 to provide that an attorney suspended for a term not exceeding one year will be required to file a petition for reinstatement if the formerly admitted attorney has been on inactive status for more than three years or if the order of suspension has been in effect for more than three years.

Disciplinary Board Rules and Procedures – The following Disciplinary Board Rules were amended effective July 14, 2001: §85.13 was established to provide that every pleading or response to a letter requesting statement of position submitted by or on behalf of a respondent-attorney in any proceeding that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney. §89.164, §89.273-§89.275, and §93.53 were amended to change or clarify the procedures for filing and service of briefs before hearing committees, procedures for reinstatement and dockets. Finally, §91.100 was adopted to make conforming changes to the Board Rules to reflect the new Pa.R.D.E. 217(j) provisions relating to law-related activities that may be conducted by formerly admitted attorneys which were amended by the Court by Order dated December 7, 2000.

Finance & Pension Committee

At its meeting on May 11, 2000, the Board reviewed reports submitted by two outside consultants concerning the Board's investment portfolio, as well as observations and recommendations concerning the Board's investments which were being invested through PNC Advisors. At that time, all investment moneys were held in Black Rock funds almost exclusively and the performance reports indicated that Black Rock provided relatively inconsistent returns across the Board. Based on these recommendations, the Board determined to obtain proposals from other investment firms with the goal of using three different firms for the Board's investments.

At its meeting on April 17, 2001, the Board changed its investment policy to

provide that the Board's assets will be divided equally between three investment firms for the purpose of evaluating net return based on the Board's conservative investment policy. Instruction will be provided to the three firms concerning asset allocation. Revenues generated by the Attorney's Annual Fee will be deposited equally between the three firms. Likewise, monthly operating expenses will be withdrawn equally from each firm. After a period of one year, the three firms' investment strategies and fund performances will be reviewed and evaluated against their fees. Each firm is required to file quarterly reports with the Board and to provide the Board, as necessary, with investment advice.

The Finance & Pension Committee reviewed proposals submitted from Bruce A. Kraig Associates and Henry H. Armstrong Associates, Inc. and recommended to the Board that these two investment firms be retained to invest the Board's funds, together with PNC Advisors.

Finally, the Committee met to review and approve the Budget for Fiscal Year 2001-2002, monitored the monthly financial reports prepared by the Office of the Secretary, and made recommendations to the Board concerning ways to limit spending and avoid unnecessary expenses.

Education Committee

The Education Committee prepared and presented the program at the Training Session for newly appointed Hearing Committee Members on July 25, 2001. 18 of the 22 New Members were in attendance at the program.

The Education Committee also designed the Program for the Board's Retreat Meeting in the Fall of 2001. The topic was titled *Open Discussion on Closed Records* and dealt with the dissemination of redacted Disciplinary Board Reports and Opinions in both public and private discipline cases.

Bridge the Gap Program

Bridge the Gap programs for those seeking admission to the bar of the Commonwealth of Pennsylvania began in the Spring of 2001. Additional programs were offered in the Fall of 2001, after the bar examination results were released. A number of former Disciplinary Board Members volunteered their time to instructing applicants at these Bridge the Gap programs. They were: James C. Schwartzman, Robert J. Kerns, Pasco L. Schiavo, Murray S. Eckell, Penina K. Leiber, Patricia S. McGivern, John A. Tumolo, William L. Keller, and the Honorable Berle M. Schiller.

The Disciplinary Board expended \$48,500 in start-up costs for the Bridge the Gap program. Some of these costs included the production of video vignettes, reproducing course materials and payment of the special consultant for the Program.

By letter dated January 8, 2002, the Supreme Court advised both the Board of Law Examiners and the Continuing Legal Education Board that the Bridge the Gap

Program which was administered as a pre-admission requirement to the practice of law, will now be required as part of the post-admission process. As a result of this change, the Disciplinary Board anticipates that it will no longer be co-funding the Bridge the Gap program and accordingly, has dropped this line item from the Budget for 2001-2002.

Hearing Committees

As of December 31, 2001, there were **177** regular hearing committee members and **24** alternate members appointed by the Disciplinary Board who serve on a pro bono basis to conduct hearings.

As was mentioned in the report on the Education Committee, a Training Session for new Hearing Committee Members was held on July 25, 2001 in Hershey.

A combined Training Session for new members and Refresher Course for experienced members has been scheduled for August 8, 2002 in Hershey.

Board Opinions on Supreme Court Website

Due to the generosity of your Honorable Court, in October 2001, the more than 150 unpublished Disciplinary Board Reports and Opinions were posted on the Supreme Court's Website. For the last several years, the Disciplinary Board has been wrestling with the problem of the District & County Reports not publishing Board Reports and Opinions, thus depriving Hearing Committee Members, Respondents and their counsel the opportunity to review recent Board decisions. Only the published reports can be found on Westlaw. The reaction to these postings has been extremely favorable.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Address

First Floor
Two Lemoyne Drive
Lemoyne, PA 17043
Phone: (717) 731-7073

Board Members Serving During 2001

Angelo L. Scaricamazza, Jr., Esq., Board Chair
John E. Iole, Esq., Board Vice-Chair
William L. Caroxelli, Esq., Past Board Chair
M. David Halpern, Esq., Past Board Chair
Thomas J. Elliott, Esq.
Mark C. Schultz, Esq.
Christine L. Donohue, Esq.
Charles J. Cunningham, III, Esq.
John W. Morris, Esq.
Richard W. Stewart, Esq.
* J. Michele Peck
Martin W. Sheerer, Esq.
* C. Eugene McLaughlin
Marvin J. Rudnitsky
Louis N. Teti, Esq.
Lisa A. Watkins, Esq.

*non-lawyer members

Principal Staff Member/Contact Person

Elaine M. Bixler
Executive Director & Secretary
Phone: (717) 731-7073

CITATION OF AUTHORITY AND DEFINITION OF BOARD'S FUNCTION

Rule 103. Pennsylvania Rules of Disciplinary Enforcement.

The Supreme Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers and in furtherance thereof promulgates these rules.

(Power is reasserted in Section 10(c) of Article V of the Constitution of Pennsylvania.)

Rule 205(a). Pennsylvania Rules of Disciplinary Enforcement.

The Supreme Court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Pennsylvania" which shall be composed of fourteen (14) members of the Bar of this Commonwealth and two (2) non-lawyer electors. One of the members shall be designed by the Court as Chair and another as Vice-Chair.

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Rule 205(c). Pennsylvania Rules of Disciplinary Enforcement.

The Board shall have the power and duty:

(1) To consider and investigate the conduct of any person subject to these rules and may initiate any such investigation on its own motion or may undertake the same upon complaint by any person.

(2) To appoint a Secretary, a Chief Disciplinary Counsel, and such assistant disciplinary counsel and staff as may from time to time be required to properly perform the functions prescribed by these rules.

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA
Calendar Years

1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989

Disciplinary Cases:

1. Informal Admonition	37	55	95	81	96	102	121	98	113	156	137	125	123	101	110	106	123
2. Private Reprimand	0	7	8	9	7	14	5	5	4	6	9	21	19	27	17	25	31
3. Probation	0	0	0	0	2	1	0	0	0	0	0	0	0	0	0	0	0
4. Public Censure	0	2	5	8	10	7	6	1	1	2	6	1	3	2	3	0	2
5. Suspension	3	12	12	8	10	13	17	8	17	12	7	7	16	5	10	17	17
6. Disbarment	3	4	6	5	13	6	12	12	21	33	24	21	16	29	23	32	18
Total Disciplinary Actions	43	80	126	111	138	143	161	124	156	209	183	175	177	164	163	180	191

Reinstatement Cases:

1. Granted	1	2	2	3	3	4	2	6	42	21	22	25	21	17	24	34	27
2. Denied	1	2	2	0	0	3	1	5	4	0	0	2	0	2	1	1	0

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 Total

Disciplinary Cases:

1. Informal Admonition	98	115	82	85	75	74	70	106	88	48	45	40	2,705
2. Private Reprimand	26	46	42	30	41	48	31	46	43	26	29	35	657
3. Probation	1	1	7	5	5	7	3	8	5	7	3	10	65
4. Public Censure	1	4	1	0	1	6	3	3	7	4	0	2	91
5. Suspension	18	10	20	12	23	26	37	33	24	23	30	27*	474
6. Disbarment	26	27	38	20	32	35	41	40	33	29	32	31 ^o	662
Total Disciplinary Actions	170	203	190	152	177	196	185	236	200	137	139	145	4,654

Reinstatement Cases:

1. Granted	34	35	27	29	24	44	31	35	33	45	35	55 [‡]	683
2. Denied	1	0	1	1	0	1	0	2	1	4	2	3 [‡]	40

* This figure does not include 10 temporary suspensions (Rule 214 Pa.R.D.E.) and 5 temporary suspensions (Rule 208(f) Pa.R.D.E.)

^o This figure includes 20 disbarments on consent (Rule 215 Pa.R.D.E.)

[‡] This figure includes 44 reinstatements to active status after being inactive three years or more, 10 reinstatements after having been suspended, and 1 reinstatement after having been disbarred.

[‡] This figure includes 1 denied reinstatement after having been suspended, 1 after having been disbarred, and 1 after having been on inactive status three years or more.