

Report of the Work of
The Disciplinary Board of the Supreme Court of Pennsylvania
For the Year 2002

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 **54,598** registered "active" attorneys through December of 2002. 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 2002, **4,998** complaints were filed, an increase of 260 from 2001. An average of **416** complaints were filed monthly. **4,927** complaints were disposed of during the year, of which **3,088** were dismissed as lacking substance. At the start of 2003, **883** active complaints were on hand.

Board Activities

During the year 2002, the Disciplinary Board met seven (**7**) times. All but two (**2**) of these meetings were two day sessions, combining executive and administrative business. One (**1**) meeting was a special video teleconference meeting. At its executive sessions, the Board adjudicated **45** proceedings involving formal charges. **29** 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 **34** respondents appeared before the Board to receive Private Reprimands. In addition to the regularly scheduled meetings, three member Board panels heard oral argument presented before them in **11** matters. Of the **45** major adjudications, **34** were referred to the Supreme Court, together with the Board's Report and Recommendation for public discipline.

Supreme Court Orders

22 Supreme Court Orders for Disbarment on Consent resulted from verified statements submitted by respondents. **5** Supreme Court Orders reinstated previously suspended attorneys (following hearing on a petition for reinstatement). **5** disbarred attorneys were reinstated in 2002. The Supreme Court denied **4** petitions for reinstatement, **1** denied after having been suspended, and **3** denied after having been disbarred. In addition, **54** 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: 218, Pa.R.D.E. to give the Office of Disciplinary Counsel 60 days to investigate and respond to petitions for reinstatement prior to referral to a hearing committee, and Rules 203, 207 and 208, Pa.R.D.E. to provide that failure to comply with orders of the Court, the Board, Hearing Committees or a Special master, as well as any inquiry from them or the Office of Disciplinary Counsel shall be grounds for discipline; to require responses to inquiries and answers to petitions for discipline; and to state that the consequence of a failure to answer a petition for discipline will be to hold all factual allegations and disciplinary charges to be admitted.

In addition to the above proposed amendments, the following rule changes were approved by either the Board or the Supreme Court: Board Rule §85.10 to 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; Board Rules §§89.57, 89.58 and 89.72 which require the scheduling a prehearing conference in all cases to be held not less than 30 days before a hearing; and Rule 402(c) permitting 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.

Finance & Pension Committee

In February 2002, the Board reviewed a new three-year projection prepared by its auditors, KPMG. Three separate forecasts were prepared with assumptions remaining unchanged except the annual registration fee. The fee was presented at \$105, \$130 and \$155. The new projections support the Board's recommendation for a fee increase in 2001. Based on the forecast presenting the fee at \$130 (which is the fee amount approved by the Supreme Court), it is anticipated that beginning in 2004, expenses will once again exceed income.

During the spring of 2002, the Finance & Pension Committee reviewed the Board's salary administration policy and the issue of salary caps and pay ranges for Board staff. It was decided that the Board ask Michael A. Sponsler, Senior Compensation Analyst with the Administrative Office of Pennsylvania Courts, to review the current pay levels for non-legal staff and make recommendations

regarding those levels. A three-member ad-hoc committee was appointed to review the recommendations made by Mr. Sponsler and report to the Board.

Following review of the recommendations made by the ad-hoc committee, the Board adopted the open-band pay plan with self-adjusting salary cap of the Administrative Office of Pennsylvania Courts, to be effective July 1, 2003. The plan provides for 14 open pay bands in which Board employees were slotted.

Finally, the Committee met to review and approve the Budget for Fiscal Year 2002-2003, monitored the monthly financial reports prepared by the Office of the Secretary, and made recommendations to the Board concerning investments, 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 and Refresher Course for Experienced Members on August 8, 2002. 136 Hearing Committee Members were in attendance at the program.

The Education Committee also designed the Program for the Board's Retreat Meeting in the Fall of 2002. The first topic was "Ethics 2000". During that portion of the Meeting, the Board met with representatives of the Pennsylvania Bar Association Legal Ethics & Professional Responsibility Committee to review the Committee's recommendations to the Pennsylvania Rules of Professional Conduct based on changes to the ABA Model Rules of Professional Conduct adopted in 2002. The second topic was "How We Do Business". For that topic, the Board reviewed the Rules and procedures governing the operations of the Office of Disciplinary Counsel and the Office of the Secretary and how the Board exercises its oversight function of those two offices. In addition, the Board reviewed delays in all stages of the disciplinary process and discussed ways to speed up the process and improve the system.

Hearing Committees

As of December 31, 2002, 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 and Refresher Course for experienced Members was held in August 2002.

A Training Session for new members has been scheduled for July 2003 in Hershey.

In the fall of 2002, a Hearing Committee Bulletin was distributed to all members informing them of recent changes to Rules and procedures governing the scheduling of hearings and their responsibilities as members.

Disciplinary Board Website

In October 2001, the more than 150 unpublished Disciplinary Board Reports and Opinions were posted on the Supreme Court's Website. During 2002, the Board began exploring the possibility of establishing its own website, with a goal of launching the site in the Summer of 2003. Possible items for the new website include an attorney registration database for users to access admission and address information for Pennsylvania attorneys, complaint procedures and complaint forms which could be downloaded for consumers and forms and procedures for attorneys regarding annual registration and reinstatement. It is anticipated that the unpublished Reports and Opinions will remain on the Court's Website, with links from the new Board website.

Publication of Non-Sanitized Board Reports

On December 14, 2002, the Supreme Court authorized the Board to begin publishing non-sanitized Board reports for those cases in which the Supreme Court issues a final order imposing public discipline. The new publication policy does not effect private discipline matters or Board reports in public discipline matters decided by the Court prior to December 14, 2002.

Chief Disciplinary Counsel

In early September 2002, Attorney John L. Doherty retired as Chief Disciplinary Counsel. During his ten years of service to the Board, Mr. Doherty increased professionalism and education on trial tactics for staff attorneys, structured new courtrooms in each of the district offices and increased Office of Disciplinary Counsel visibility in the legal community. It was a decade of massive computerization – from statewide automation and communication between the Courts and the Board offices to access of on-line legal information to aid in preparation of trial documents.

Mr. Doherty's successor as Chief Disciplinary Counsel is Attorney Paul J. Killion, from Harrisburg, who began employment in September 2002. Mr. Killion has a varied background having worked for the United States Attorney's Office for the Middle District of PA, the United States Department of Justice, the Attorney General's Office in the Commonwealth of Pennsylvania and as a private practitioner.

While Mr. Doherty's office was located in Pittsburgh, Mr. Killion established a new Chief Disciplinary Counsel's Office on the 14th Floor of the Fulton Bank Building in downtown Harrisburg in the fall of 2002.

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 2002

John E. Iole, Esq., Board Chair
Charles J. Cunningham, III, Board Vice-Chair
M. David Halpern, Esq., Past Board Chair
Mark C. Schultz, Esq.
Christine L. Donohue, 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.
Robert E. J. Curran, Esq.
Donald E. Wright, Jr., Esq.
Robert C. Saidis, 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.

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 2002 Total

Disciplinary Cases:

1. Informal Admonition	98	115	82	85	75	74	70	106	88	48	45	40	54	2,759
2. Private Reprimand	26	46	42	30	41	48	31	46	43	26	29	35	32	689
3. Probation	1	1	7	5	5	7	3	8	5	7	3	10	8	73
4. Public Censure	1	4	1	0	1	6	3	3	7	4	0	2	2	93
5. Suspension	18	10	20	12	23	26	37	33	24	23	30	27	29*	503
6. Disbarment	26	27	38	20	32	35	41	40	33	29	32	31	42 ^o	704
Total Disciplinary Actions	170	203	190	152	177	196	185	236	200	137	139	145	167	4,821

Reinstatement Cases:

1. Granted	34	35	27	29	24	44	31	35	33	45	35	55	64 [‡]	747
2. Denied	1	0	1	1	0	1	0	2	1	4	2	3	4 [#]	44

* This figure does not include 11 temporary suspensions (Rule 214 Pa.R.D.E.) and 3 temporary suspensions (Rule 208(f) Pa.R.D.E.)

^o This figure includes 22 disbarments on consent (Rule 215 Pa.R.D.E.)

[‡] This figure includes 54 reinstatements to active status after being inactive three years or more, 5 reinstatements after having been suspended, and 5 reinstatement after having been disbarred.

[#] This figure includes 1 denied reinstatement after having been suspended and 3 after having been disbarred.