

Report of the Work of  
The Disciplinary Board of the Supreme Court of Pennsylvania  
First Floor, Two Lemoyne Drive, Lemoyne, PA 17043  
For the Year 2003

**General Statistics**

The attorney population in Pennsylvania has increased dramatically since the Board began its operations. The number of active paid attorneys for the 1972-1973 Fiscal Year was **13,057** as compared to **54,886** active paid attorneys as of December 31, 2003.

As the Court is aware from the number of disciplinary matters before it, the number of complaints is increasing. The Board is considering more serious and complicated matters. The efficient disposition of complaints is a matter that the Board is continually required to keep under review. During the year 2003, **5,013** new complaints were received by the Office of Disciplinary Counsel, an increase of 15 from the year 2002. **4,893** complaints were disposed of during the year, **227** of which resulted in discipline. At the start of 2003, **1,003** active complaints were pending. A tabulation of the disciplinary actions taken since the beginning of the Board's operations in 1972 is set forth on the attached chart. In 2003, the Supreme Court ordered the disbarment of **38** attorneys and suspended **31** attorneys (15 of which were temporary suspensions).

**Budget**

As in previous years, the financial records of the Board have been subjected to unannounced examination by our outside auditors. The results of these audits have all been satisfactory. Further, Board Members are furnished with detailed monthly financial reports by the Office of the Secretary. This enables the Board to monitor each budget line item on an ongoing basis.

For Fiscal Year 2002-2003, the Board's revenues totaled \$7,435,324 and expenditures totaled \$6,998,909. Revenues exceeded expenditures by \$436,415. Salaries, employee benefits and office rent comprise 70% of the Board's expenses. The Board's invested funds experienced an unrealized loss of \$66,583, as compared to the loss in Fiscal Year 2001-2002 which was \$501,243.

In order to determine the financial requirements for the continued operation of this Board, in February 2000, we had a forecast of future revenue and expenses prepared by our auditors, KPMG LLP. This report set forth the projected losses from our operations based on the current assessment at that time.

## **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 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. In the Fall of 2001, the Board requested that our auditors prepare a new up-dated three year forecast based on the increased fee of \$130.00. The draft forecast was approved by the full Board in February 2002. The annual fees represent 92% of Disciplinary Board revenues. As can be seen from the enclosed chart, since 1996 the average increase in the number of newly registered attorneys has dropped. The new forecast indicates that income will exceed expenses at least until Fiscal Year 2004-2005.

## **Board Activities**

During the year 2003, the Disciplinary Board met six (6) times. All but one (1) of these meetings were two day sessions combining administrative and executive business. At its executive sessions, the Board adjudicated **57** proceedings involving formal charges, which is an increase of 12 from the number of proceedings adjudicated in 2002. Of the 57 major adjudications, **42** were referred to the Supreme Court, together with the Board's Report and Recommendations. In addition to regularly scheduled meetings, three member Board panels heard oral argument in **7** matters. In **1** matter a single Board Member conducted a hearing on a petition to dissolve a temporary suspension and a Three Member Panel conducted a hearing at the direction of the Supreme Court in **1** matter relating to a petition to dissolve a freeze on certain bank accounts. Three Member Review Panels considered recommendations for summary Private Reprimands in **31** cases and considered appeals by the Office of Disciplinary Counsel from Reviewing Hearing Committee Members in **3** cases. **29** respondents appeared either before the full Board or before three Member Board Panels to receive Private Reprimands. Finally, individual Board Members reviewed and approved the filing of **6** petitions for emergency temporary suspension with the Supreme Court.

In addition to the matters considered at the regularly scheduled sessions of the Board in 2003, the Board Chair filed Reports with the Supreme Court recommending the reinstatement of **43** attorneys who had been on inactive status for more than three years,

had never been suspended or disbarred, and who had filed petitions for reinstatement to active status.

At the request of the Board, the Chief Disciplinary Counsel and the Executive Director have taken steps to speed up the disposition of complaints. The Board, Chief Disciplinary Counsel and the Executive Director all agree that complainants and respondents deserve to have cases handled in a timely manner. A number of changes in procedures and productivity have served to significantly cut down the time it takes to process a case.

## **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.

In the past, Notices of Proposed Rulemaking were published in the *Pennsylvania Bulletin* in accordance with Rule 103(a) of the Pa.R.J.A. In March 2003, the Board determined to enlarge its publication of these Notices to other legal periodicals because of concerns that lawyers in the Commonwealth were not being given ample opportunity to review and comment on proposed rule changes. It was decided that Notices will be sent to the *Pennsylvania Bulletin*, Legal Intelligencer, PA Law Weekly, and Pittsburgh Legal Journal. During 2003, the Board published Notices of Proposed Rulemaking soliciting comments on proposed amendments to the following Rules:

- 1) amendments to the Rules of Professional Conduct relating to Ethics 2000, which would be the first comprehensive changes to these Rules since their adoption in 1987; and
- 2) amendments to the Rules of Professional Conduct and Rules of Disciplinary Enforcement relating to Multijurisdictional Practice.

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. 218(c)(2) - Amended effective October 4, 2003 to provide that when petitions for reinstatement are filed with the Board by formerly admitted attorneys, Disciplinary Counsel is given a period of 60 days to conduct an investigation and prepare a response to the petition before the petition is referred to a hearing committee. A note was added to the amendment to provide that if Disciplinary

Counsel objects to the reinstatement, the response should explain in reasonable detail the reasons for the objection.

Pa.R.D.E. 203(b)(4), 207(b)(2) and 208(b) – Amended effective October 4, 2003. Rule 203(b)(4) to provide that failure of a respondent-attorney without good cause to comply with orders of the Court, Board, hearing committees or special masters, shall be grounds for discipline. Rule 207(b)(2) to state that no disposition of a matter shall be recommended by Disciplinary Counsel until the respondent-attorney has been notified of the allegations and the time for response has expired. Rule 208(b) to state that the consequences of a respondent-attorney's failure to answer a Petition for Discipline will be to deem all factual allegations as admitted.

Pa.R.D.E. 205 and 208 – Amended effective October 17, 2003 to provide that private reprimands may be administered to attorneys for misconduct either by the Disciplinary Board or through a designated panel of three members of the Board selected by the Board Chair.

Pa.R.P.C. 1.19 – New Rule 1.19 and an amendment to the *Comment* to Rule 1.6 of the Rules of Professional Conduct were approved by the Supreme Court on December 22, 2003 and took effect on January 3, 2004 to require lawyers acting as lobbyists to comply with registration and disclosure laws, regulations or rules enacted by the executive or legislative branches of state government; authorize disclosure of information related to client representation in order to comply with disclosure laws; and reiterates that all such compliance actions by a lawyer-lobbyist must be consistent with the Rules of Professional Conduct.

### **Finance & Pension Committee**

In 2003, the Finance & Pension Committee periodically reviewed the performance of the invested funds being managed by the Board's three investment firms, as well as the performance of the pension funds managed by PNC Advisors. In addition, the Committee reviewed and approved the proposed Budget for Fiscal Year 2003-2004. After extensive review and analysis, the Board approved adopting the Administrative Office of Pennsylvania Courts pay plan which provides for an open-band pay plan with self-adjusting salary caps, effective July 1, 2003.

In November 2003, the Board approved joining the Pennsylvania Judiciary's medical benefits plan, effective January 1, 2004. Although the judiciary's medical benefits were very similar to those offered to employees of the Disciplinary Board, the main reason behind the Board's request to join the Court's plan was to better control the rising costs of medical insurance through a larger group size. Although the Disciplinary Board is self-funded through the attorney's annual fees, the relatively small size of the staff and

geographic location of the offices limited the Board's options with medical providers. The Board is neutralizing any increases in medical insurance costs through employee contributions and is reimbursing the Administrative Office of Pennsylvania Courts for the Board's insurance costs.

In July 2003, the Board received a letter from Justice William Lamb advising of the establishment of the Investment Advisory Board ("IAB"). The IAB is responsible for developing an investment policy and selecting an investment firm to implement the policy. In addition, the IAB will develop policies and procedures to ensure that each participating Board's normal operations are not adversely affected by this new investment structure. The IAB consists of one representative from each of the three initially participating Boards and four members, including the Chair, appointed by the Supreme Court. The Court Administrator of Pennsylvania serves in an *ex officio* and tie-breaking capacity. The three Court-affiliated Boards involved are the Disciplinary Board, the PA Lawyers Fund for Client Security Board and the PA Continuing Legal Education Board. The letter from Justice Lamb further asked the Board Chair to select and identify a Board Member to represent each Board on the IAB. Donald E. Wright, Jr., Esq., was named as the Disciplinary Board's representative.

### **Education Committee**

The Education Committee prepared and presented the program at the Training Session for newly appointed Hearing Committee Members on July 17, 2003 in Hershey. 26 of the 29 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 2003. The topics were Multijurisdictional Practice and Opening the System to the Public. Professor Laurel Terry from Penn State Dickinson School of Law was the Board's guest speaker for the Multijurisdictional Practice topic. After the compelling presentation made by Professor Terry, the Board was of the unanimous opinion that Pennsylvania should adopt the ABA Model Rules relating to Multijurisdictional practice, as well as recommend to the Supreme Court that the two rules relating to foreign legal consultants be adopted. Regarding the second topic, the Board's guest speaker was John T. Berry, who is currently the Executive Director of the State Bar of Michigan and on the national level, is a member of the ABA House of Delegates, served on the ABA Ethics 2000 Commission and serves on the ABA Joint Committee on Lawyer Regulation. At its meeting the following day, the Board unanimously passed a motion to further study opening the disciplinary system at the point where formal charges (i.e. a petition for discipline) are filed against an attorney.

## **Communications Committee**

In July 2003, the Board determined to establish a new Communications Committee to be chaired by then Board Member and now Board Vice-Chair, Louis N. Teti. The role of the new Committee is to provide oversight to the Board's new Web site (which will be addressed in more detail below) and to explore ways of improving communications with the public, attorneys, law students and others. In 2004, the Office of Disciplinary Counsel will begin presenting accredited Continuing Legal Education programs directed to lawyers and to the public to better familiarize them with the Rules of Professional Conduct and how the disciplinary system works.

## **Disciplinary Board Website**

On June 25, 2003, the Disciplinary Board launched its new Web site at [www.padisiplinaryboard.org](http://www.padisiplinaryboard.org). This Web site offers a wealth of information for consumers and lawyers and gives visitors the ability to easily search Pennsylvania attorney registration records, to verify address information and an attorney's current status, verify which lawyers are in good standing, and ascertain whether a lawyer has ever been publicly disciplined. The public discipline section contains links directly to the Board Reports posted on the Supreme Court's Web site, where a Report is available. We are advised that a number of the Courts in the Commonwealth are also finding this site useful in verifying information concerning attorneys appearing before them.

Consumers can also learn how to file a complaint against a lawyer and download the complaint form in English or Spanish. In addition, lawyers can get answers to frequently asked questions concerning attorney registration, reinstatement and disciplinary procedures, download copies of the current Rules and forms for attorney registration and reinstatement, and view Notices of Proposed Rulemaking. Viewers can also subscribe to the Board's E-Mail Newsletter.

### **Other Highlights in 2003**

The year 2003 marked the first time in history that the Board leadership changed three times in one calendar year. John E. Iole served as Board Chair from April 1, 2002 until his retirement on January 29, 2003. Charles J. Cunningham, III, was appointed as his successor until his term expired on September 19, 2003, after which Richard W. Stewart was appointed as Board Chair. In addition to Messrs. Iole and Cunningham, four other Board Members retired from service in 2003. They were M. David Halpern and Mark C. Schultz on January 29, 2003, and Christine L. Donohue and John W. Morris on April 1, 2003. All of these attorneys were dedicated to professional responsibility and the field of attorney discipline and provided distinguished service to the Disciplinary Board. In anticipation of this large turn-over in membership, a Board Member Handbook was created which sets forth procedures used by both the Office of Disciplinary Counsel and the Office of the Secretary, provides sample forms and indoctrination material for new members, and assists the Board in its oversight of the operations of the two offices.

In January 2003, the Pennsylvania Disciplinary Board was invited to participate in a planning meeting with representatives from seven other jurisdictions to discuss whether there was a desire to form a national organization for members and staff of the disciplinary boards. Elaine Bixler, Executive Director & Secretary of the Board, was our representative at that meeting. It was determined that there is a need for such an organization since other jurisdictions have many of the same issues, such as how to support and train their volunteers, salary issues for support staff, case tracking questions, and consistency in disciplinary decisions. The mission of this organization is that it serves as a national forum for the exchange of information and ideas about the administration, conduct and improvement of formal disciplinary and related proceedings for lawyers admitted to practice in one or more jurisdictions of the United States.

The first meeting of the National Council of Lawyer Disciplinary Boards was held on May 30, 2003 in conjunction with the 29<sup>th</sup> National Conference on Professional Responsibility in Chicago, Illinois. Board Members Charles J. Cunningham, III, and Marvin J. Rudnitsky attended that Meeting with Ms. Bixler. It was decided that the initial meeting be limited to the core group of eight jurisdictions involved in the planning meeting and shortly thereafter efforts began to identify and contact the key people in other jurisdictions with the goal of having the first full Annual meeting in early February 2004. Pennsylvania is represented on the Board of the Directors of this new national organization and is proud to be actively involved since its inception.

## **Hearing Committees**

As of December 31, 2003, 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.

In July 2003, the Board determined to award Certificates of Appreciation to its retiring hearing committee members and after creating the master form, Certificates were printed and sent to members who retired from service in 2002 and 2003.

As was mentioned in the report on the Education Committee, a Training Session for new Hearing Committee Members was held on July 17, 2003 Hershey. A combined Training Session for new members and Refresher Course for experienced members has been scheduled for September 28, 2004 in Hershey.



THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

Board Members Serving During 2003

John E. Iole, Esq., Board Chair until 1/29/2003  
Charles J. Cunningham, III, Board until 9/19/2003  
M. David Halpern, Esq., Board Member until 1/29/2003  
Mark C. Schultz, Esq., Board Member until 1/29/2003  
Christine L. Donohue, Esq., Board Member until 4/1/2003  
John W. Morris, Esq., Board Member until 4/1/2003  
Richard W. Stewart, Esq., Appointed Board Chair 9/19/2003  
\* J. Michele Peck  
Martin W. Sheerer, Esq.  
\* C. Eugene McLaughlin  
Marvin J. Rudnitsky  
Louis N. Teti, Esq., Appointed Board Vice-Chair 9/19/2003  
Lisa A. Watkins, Esq., Board Member until 6/11/2003  
Robert E. J. Curran, Esq.  
Donald E. Wright, Jr., Esq.  
Robert C. Saidis, Esq.  
Jonathan H. Newman, Esq.  
Marc S. Raspanti, Esq.  
Laurence H. Brown, Esq.  
Smith Barton Gephart, Esq.  
Gary G. Gentile, Esq.  
Francis X. O'Connor, Esq.  
Lori A. Flickstein, 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 2002 2003 Total

Disciplinary Cases:

1. Informal Admonition	98	115	82	85	75	74	70	106	88	48	45	40	54	58	2,817
2. Private Reprimand	26	46	42	30	41	48	31	46	43	26	29	35	32	36	725
3. Probation	1	1	7	5	5	7	3	8	5	7	3	10	8	8	81
4. Public Censure	1	4	1	0	1	6	3	3	7	4	0	2	2	1	94
5. Suspension	18	10	20	12	23	26	37	33	24	23	30	27	29	31•	534
6. Disbarment	26	27	38	20	32	35	41	40	33	29	32	31	42	38♣	742
Total Disciplinary Actions	170	203	190	152	177	196	185	236	200	137	139	145	167	173	4,993

Reinstatement Cases:

1. Granted	34	35	27	29	24	44	31	35	33	45	35	55	64	58*	747
2. Denied	1	0	1	1	0	1	0	2	1	4	2	3	4	4‡	44

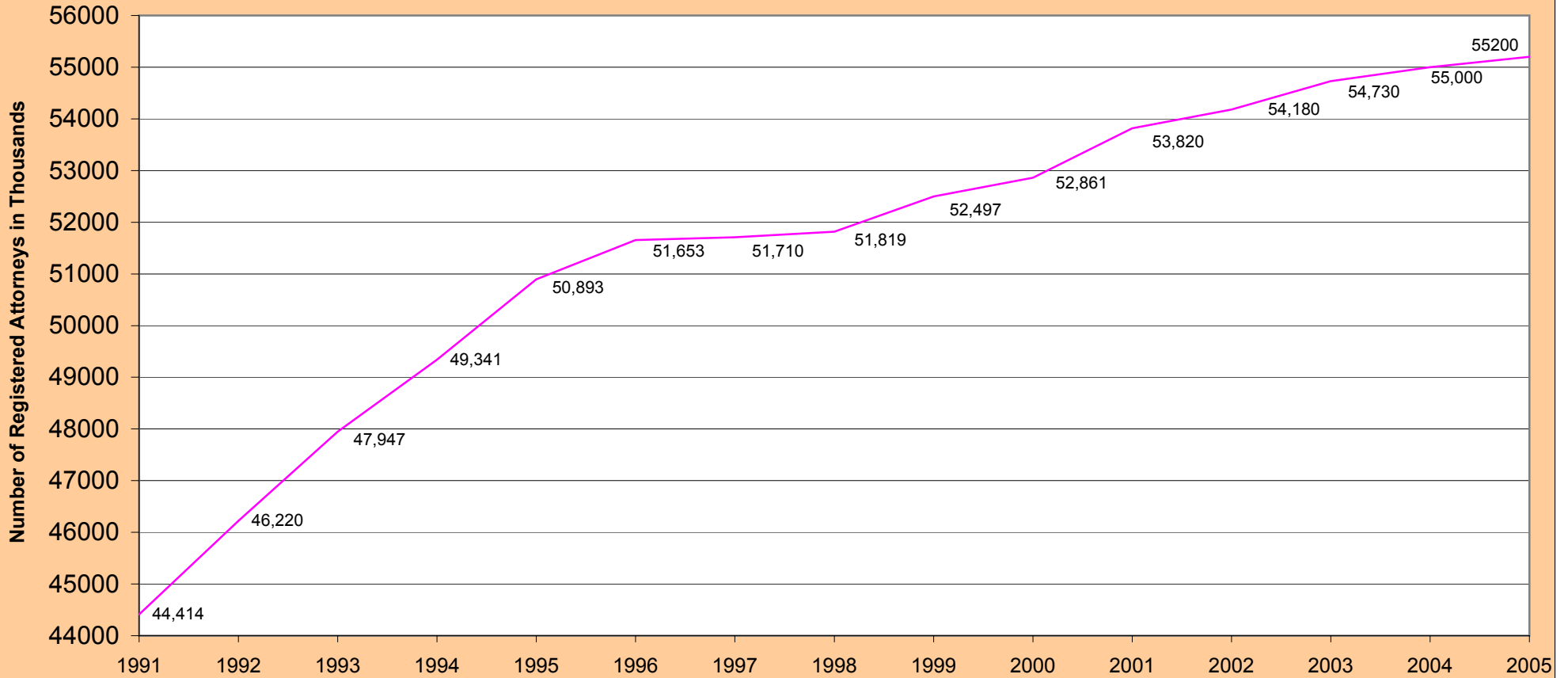
• This figure does not include **8** temporary suspensions (Rule 214 Pa.R.D.E.) and **7** temporary suspensions (Rule 208(f) Pa.R.D.E.)

♣ This figure includes **26** disbarments on consent (Rule 215 Pa.R.D.E.)

\* This figure includes **40** reinstatements to active status after being inactive three years or more, **14** 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.

# Number of Registered Attorneys



**Actual**

**Forecasted**