

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 2006

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 **58,269** active paid attorneys as of December 31, 2006.

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 2006, **4,767** new complaints were received by the Office of Disciplinary Counsel. **4,908** complaints were disposed of during the year, **305** of which resulted in discipline. 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 2006, the Supreme Court ordered the disbarment of **39** attorneys and suspended **77** attorneys (12 of which were temporary suspensions). Due to the fact that a number of disciplinary matters involve multiple complaints of misconduct against that attorney, the number of complaints resulting in discipline will not equal the total disciplinary actions taken in any given year.

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 Executive Director. This enables the Board to monitor each budget line item on an ongoing basis.

For Fiscal Year 2005-2006, the Board's revenues totaled \$7,813,318 and expenses totaled \$7,915,894. Expenses exceeded revenues by \$102,576. After factoring in the unrealized gain on investments of \$601,650, revenues exceeded expenditures by \$499,074. The Board's invested funds experienced unrealized losses of \$66,583 in Fiscal Year 2002-2003 and \$501,243 in Fiscal Year 2001-2002 and saw its first gain of \$413,703 in 2003-2004 and another gain of \$318,082 in 2004-2005.

On February 2, 2006, the annual Lawyer Assessment Committee telephone conference call took place. At that time, the Board submitted a Tentative Budget for Fiscal Year 2006-2007, which projected that expenses would exceed revenues by approximately \$838,617 (\$1,388,617, less the Board's estimated \$550,000 share of IAB earnings). It was anticipated that a draw down from the reserve fund would be needed to defray this deficit.

Discipline on Consent

Effective June 11, 2005, the Supreme Court approved amendments to Rule 215, Pa.R.D.E. In July 2005, the Board established a procedure for three-member panels to review Joint Petitions for Discipline on Consent. When Joint Petitions are filed with the Board, they are assigned to three-member panels to review and either approve or deny the Joint Petitions. The Panel Chair contacts the other two members, using the most efficient method possible in order to discuss the matter, and they come to a decision. Once a decision is made, the Panel Chair returns the signed Recommendation page to the Board Secretary. If the Joint Petition is approved, the Secretary's office notifies the respondent-attorney of the approval and that the necessary expenses must be paid as a condition to the grant of the Petition. The respondent-attorney is given ten days in which to do so. Upon receipt of payment, the Panel's Recommendation is forwarded to the Supreme Court, if the joint recommendation is for some form of public discipline.

During the 2006 year, **33** Joint Petitions in Support of Discipline on Consent were filed with the Board, **21** of which were filed prior to scheduled disciplinary hearings. **29** Joint Petitions were approved and **3** were denied. Of those approved, **10** resulted in private discipline, **3** resulted in public censures and **16** resulted in suspensions.

Board Activities

During the year 2006, the Disciplinary Board met six (6) times. All of these meetings were two-day sessions combining administrative and executive business. At its executive sessions, the Board adjudicated **58** proceedings involving formal charges, which is a decrease of **34** from the number of proceedings adjudicated in 2005. This was attributed to the increasing number of Joint Petitions for Discipline on Consent being filed with obviated the need for the Board to formally consider these matters. Of the 58 major adjudications, **46** 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 **10** matters. Three-member review panels considered recommendations for summary Private Reprimands in **14** cases and considered **1** appeal by the Office of Disciplinary Counsel from a Reviewing Hearing Committee Member's determination. **21** respondents appeared before three-member Board panels to receive private reprimands. Finally, **1** Board Member conducted a hearing on a petition to revoke probation and **4** individual Board Members reviewed and approved the filing of petitions for emergency temporary suspension with the Supreme Court.

In addition to the matters considered at the regularly scheduled sessions of the Board in 2006, the Board Chair filed Reports with the Supreme Court recommending the reinstatement of **72** 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, the Executive Director and the Secretary of the Board have taken steps to speed up the disposition of complaints. The Board is cognizant of the fact 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

Once again, in 2006, the Rules Committee was extremely busy. They considered amendments to various Pennsylvania Rules of Professional Conduct, Pennsylvania Rules of Disciplinary Enforcement and Disciplinary Board Rules and Procedures.

During 2006, the Board published Notices of Proposed Rulemaking soliciting comments on proposed amendments to the following Rules:

1) Amendment to the Rule of Disciplinary Enforcement 208(g) relating to the imposition of an administrative fee to be paid by respondent-attorneys in cases resulting in the imposition of any form of discipline more serious than an informal admonition - no comments received;

2) Amendment to §91.3 of the Board's Rules of Organization and Procedure relating to clarifying issues concerning subpoenas, including providing procedures for service of out of state lawyers and for moving to quash subpoenas - no comments received;

3) Amendments to the Pennsylvania Bar Admission Rules and the Rules of Disciplinary Enforcement relating to Misstatements or Omissions in Licensure Applications - no comments received;

4) Amendments to Rule of Professional Conduct 1.15 and Rule of Disciplinary Enforcement relating to Safekeeping Property and Funds of Clients and Third Persons – Mandatory Overdraft Notification – 27 comments received;

5) Amendments to Rule of Disciplinary Enforcement 402 relating to Confidentiality of Disciplinary Proceedings – no comments received; and

6) Additional Amendments to Rule of Professional Conduct 1.15 and Rule of Disciplinary Enforcement relating to Safekeeping Property and Funds of Clients and Third Persons – Mandatory Overdraft Notification – 2 comments received.

In addition to the above proposed amendments, the following rule changes were approved by either the Board or the Supreme Court in 2006:

Order No. 63 Amending the Board's Rules of Organization and Procedure to make conforming changes to its rules to reflect adoption of amendments to Pa.R.D.E. 104, 208, 209, 213, 215, and 402. The amendments took effect February 25, 2006.

Order No. 64 Amending the Board's Rules of Organization and Procedure to establish time limits for the filing and service of motions and answers and the scheduling of a hearing before a Hearing Committee member to hear a challenge to a subpoena. The amendments took effect April 1, 2006.

Pa.R.D.E. 203 and 204 were amended by Order dated March 21, 2006, effective April 8, 2006 to provide that making a material misrepresentation of fact or deliberately failing to disclose a material fact in connection with a bar application shall be grounds for discipline and to provide for revocation of an attorney's admission as a type of discipline in cases involving bar application omissions or misrepresentations.

Pa.R.D.E. 214(g) was amended by Order dated March 28, 2006, effective April 15, 2006 to expand the Court's authority on actions it may take in cases involving conviction of an attorney for a crime other than a serious crime.

Order No. 65 Amending the Board's Rules of Organization and Procedure to make conforming changes to its rules to reflect adoption of amendments to Pa.R.D.E. 208(h), 219(g) and 219(i). The amendments took effect May 20, 2006.

Pa.R.D.E. 208(g) was amended by Order dated June 28, 2006, effective July 15, 2006 to assess an administrative fee of \$250 in cases where discipline, other than an informal admonition, is imposed.

Order No. 66 Amending the Board's Rules of Organization and Procedure to make conforming changes to its rules to reflect adoption of amendments to Pa.R.D.E. 203(b), 204(a), 208(g) and 214(g). The amendments took effect December 2, 2006.

Pa.R.D.E. 217(j) was amended by Order dated December 11, 2006, effective December 23, 2006 to persons becoming formerly admitted attorneys on or after that date and effective January 22, 2007 to persons who were already formerly admitted attorneys as of December 23, 2006. This amendment replaced the words "employment" and "employed" with the words "engagement" and "engaged" and clarified that formerly admitted attorneys and supervising attorneys are required to file notices of engagement with the Disciplinary Board and notify the Board upon termination of the engagement.

Finance & Pension Committee

In 2006, the Finance & Pension Committee periodically reviewed the performance of the Board's pension funds managed by PNC Advisors. In addition, the Committee reviewed and approved the proposed Budget for Fiscal Year 2006-2007 and established a two-tiered late payment penalty of \$100 at the time the Final Notices were mailed to attorneys, and which increased to \$200 at the time the list of delinquent attorneys was forwarded to the Supreme Court. The Committee established the returned check fee at \$50. The Committee also reviewed the audit performed by the Board's auditors.

In July 2003, the Board was notified by the Supreme Court of the establishment of the Investment Advisory Board ("IAB"). The IAB was established to assist the Supreme Court in its oversight and consolidation of investment portfolios that would enhance returns and reduce investment fees. The IAB developed an investment policy and selected an investment firm to implement the policy. In September 2005, the Supreme Court adopted Rules setting forth responsibilities and procedures to ensure that each participating Board's normal operations would not be adversely affected by this new investment structure. Effective July 1, 2005, the Administrative Office of the Supreme Court began investing the Board's funds in the consolidated account through PNC Advisors. The IAB consists of one representative from each of the three initially participating Boards and four members 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. Board Member Donald E. Wright, Jr., Esq., was named as the Disciplinary Board's representative. In February 2007, the Pennsylvania Board of Law Examiners became a program member and Rule 1905, Pa.R.J.A. was amended to add one additional IAB member to be appointed by that Board.

Education Committee

The Education Committee designed the program for the Board's Educational Meeting in July 2006. The topics were Lawyer Succession Issues and Disaster Planning. With respect to Lawyer Succession Issues, the Board discussed the number of aging lawyers entering the ranks of senior citizens and the implications the aging lawyer population has on the profession. The Board's guest speaker was retired Board Member C. Eugene McLaughlin, who spoke from his perspective as a small business owner about the need for solo practitioners to have a plan in place to ensure that clients are protected in the event the lawyer has died. The Board also discussed whether there was a need for changes to the Rules governing conservatorships and the use of Office of Disciplinary Counsel staff attorneys as conservators.

The Board's guest speaker for the Disaster Planning topic was Attorney J. Marc Vezina from New Orleans, Louisiana. Mr. Vezina spoke at length about his law firm's experiences in dealing with Hurricane Katrina. He gave tips on how to prepare for an unexpected disaster, evaluating your risk level based on the location of your office, considering what documents and records are vital to the operations of your practice and for

the service of your clients, taking an inventory of all computer and technical assets in the firm, finding your staff after a disaster, determining whether temporary offices will be necessary, reestablishing communications, and recovering destroyed documents.

The Education Committee also re-designed the program used at the Training Session & Refresher Course for all Hearing Committee Members held on September 21, 2006 in Hershey. Of the 198 current Hearing Committee Members, 169 were in attendance. The Program started with two concurrent workshops – one for new members and one for experienced members. New members received information on the disciplinary system, their role in the process, how Hearing Committees are assigned and hearings are scheduled, and a review of the types of discipline and how discipline is determined. At the same time, panels of Senior and Experienced Hearing Committee Members provided tips on chairing hearing committees, presiding at hearings on subpoena issues, conducting prehearing conferences, and issues and questions other members had relating to their duties. After the two groups were brought back together, they were all presented with topics relating to Opening the System, Discipline on Consent, Respondents' in Financial Hardship, the Latest Trends in Mitigation and Aggravation, Being on Public Display, Recent Case Law & Rule Changes, A Non-lawyer's Perspective and a Review of Reinstatement Procedures. The Program was an overwhelming success, and the Board thanks the following individuals for their participation in the Program: Retired Board Member and Chair, now Philadelphia Court of Common Pleas Judge Charles J. Cunningham, III, retired Board Member C. Eugene McLaughlin, Respondents' Counsel Ellen C. Brotman and Dana Pirone Garrity, Disciplinary Counsel Cathy Young Thomer and Raymond S. Wierciszewski, and Hearing Committee Members Robert F. Morris, David W. Reager, Brad Steven Rush, Lance J. Nelson, Edward C. Toole, Jr., William A. Fetterhoff and Marie Milie Jones. In addition, the following Board Members and staff volunteered their time to present this Program: Louis N. Teti, Robert C. Saidis, Marc S. Raspanti, Laurence H. Brown, Francis X. O'Connor, Min S. Suh, Robert L. Storey, Paul J. Killion, Joseph W. Farrell, Elaine M. Bixler and Laura K. Mohny.

Communications Committee

In July 2003, the Board established a new Communications Committee. The role of the new Committee is to provide oversight to the Board's then-new Website and to explore ways of improving communications with the general public, attorneys, law students and others.

In January 2005, the Board approved the retention of Hershey Philbin Associates (HPA) for consultation services. A sub-committee was formed to meet with HPA monthly, draft an Attorney E-Newsletter, a Hearing Committee E-Newsletter, a new consumer brochure, establish a website for Hearing Committee Members, and to keep HPA apprised of newsworthy events.

During 2006, HPA issued numerous press releases concerning appointment and reappointment of Members of the Disciplinary Board, the HALT Report Card issued in March 2006, the new liability insurance disclosure rule, and other news of interest to the

legal community and the public. An article by Board Member Min Suh to educate at risk audiences was developed and published in *Unidad Latina* in January 2006. A PowerPoint template on the disciplinary system and the Board's functions was designed by HPA for the Board's use at future speaking engagements.

The monthly Attorney E-Newsletter continued to be distributed by HPA to all subscribers. From January to December 2006, the number of subscribers increased by 4,611. A number of positive testimonials have been emailed from subscribers, citing how informative and helpful the newsletter is to them. HPA designed an attorney registration mailing insert that was used to solicit subscribers to the Attorney E-Newsletter. A short survey was developed to gather feedback from subscribers on the helpfulness of the material, how beneficial it is, and what changes could be made. Results from over 1,200 subscribers were gathered and a report was provided to the Board's Communications Committee.

The Chair of the Communications Committee also reviews requests from attorneys for no public access to their address information. The majority of requests received and approved in 2006 were from attorneys who were either active and not practicing law or were or inactive status. A number of other requests citing safety and/or security issues were also approved for no public access.

Disciplinary Board Website

On June 25, 2003, the Disciplinary Board launched its Website at www.padisciplinaryboard.org. In 2005, the Board purchased two additional domain names (www.padboard.org and www.padb.us) in an effort to provide easier access to the site.

In late-June 2006, the Board launched its redesigned website with the goal of making it more consumer friendly. The new site features an attorney section, a consumer section, and an attorney look up section. The attorney section provides forms for registration and reinstatement, information on registration and reinstatement procedures, options to look up attorneys, frequently asked questions, current copies of the Rules, and other attorney related information. The new consumer section allows consumers to look up attorneys, explains the process for filing a complaint, provides downloadable copies of the complaint form and informational brochures, and provides information to better understand how the disciplinary system works. The attorney look up section, which can be accessed directly from the Home page or from either the Attorney or Consumer section, allows users to easily search registered Pennsylvania attorneys to verify public address information, the attorney's current status, date of admission, a history of public discipline, if any, and whether there are any public proceedings pending against that attorney.

Hearings and Hearing Committees

In October 2004, the hearing committee organization was re-structured to give the Board the ability to assign formal hearings to committees within a disciplinary district using all available committee members. Members were ranked based on their experience. In addition to reorganizing the Hearing Committees, we have also made changes in the procedures for scheduling hearings. At the same time the three Committee members are selected, they are contacted by telephone and prehearing and hearing dates are set. If one of the members is not available, the staff in the Secretary's Office can call another member to find someone available on the dates selected. The Notices of Prehearing and Hearing are sent to the parties and the Committee at the same time the assignment is made. This has eliminated the undue delays in scheduling we experienced in the past.

New procedures were put in place to try to eliminate overdue Hearing Committee Reports. After the briefing schedule has passed, the members of the Hearing Committee are sent a reminder letter by the Board Secretary giving them the due date for the Report. In addition, a week or two before the Report is due, Counsel to the Board places a reminder phone call to the Committee Chair reminding him or her of the upcoming due date and offering assistance, if needed. Since the establishment of this new procedure, the Board has had several Board Meetings where no Hearing Committee Reports were reported as overdue.

In August 2005, the Board launched a Website exclusively for the use of Hearing Committee Members. This site offers sample hearing committee reports, orders and other documents, Word templates for the preparation of all types of committee reports, as well as travel expense and other forms. It also includes a research section which contains links to published Board Reports, recent Supreme Court Opinions and current copies of the Rules.

In 2006, Hearing Committee Members received quarterly E-Newsletters which updated them on procedural changes, contained tips on preparing Hearing Committee Reports, and summarized cases of interest decided by the Supreme Court.

As of December 31, 2006, there are **70** Senior members, **73** Experienced members and **55** New members appointed by the Disciplinary Board who serve on a pro bono basis to conduct hearings.

Other Highlights in 2006

HALT Report Card – In early March 2006, the HALT organization issued its 2006 Lawyer Discipline Report Card. In the fall of 2002, HALT issued its first Lawyer Discipline Report Card and ranked Pennsylvania's system 51st in the nation, assigned an overall grade of F, and HALT noted that no other disciplinary agency received a lower grade. The 2006 Report Card ranked Pennsylvania 5th in the nation, assigned an overall grade of C+, and wrote "Pennsylvania takes top honors for Most Improved". They based this greatly improved grade primarily on the launching of the Board's Website in 2003, a more

organized staff that now provides the American Bar Association with statistics related to its case processing, and opening the disciplinary system in Pennsylvania. While the Board appreciates the recognition from HALT, our efforts to improve the disciplinary system over the last several years were not made as a result of the first Lawyer Discipline Report Card but rather were in response to the Board's realization that in balancing the rights of respondents against our responsibility to protect the public, opening the disciplinary system in certain cases was warranted and necessary.

National Meetings and Joint Dinners - In June 2006, Board Member Francis X. O'Connor and Board Secretary Elaine Bixler attended the ABA 32nd National Conference on Professional Responsibility and the Third Annual Meeting of the National Council of Lawyer Disciplinary Boards (NCLDB) in Vancouver, British Columbia. In September 2006, selected members of the Board and staff were invited to attend a working dinner with the PA Lawyers Fund for Client Security.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Board Members Serving During 2006

Marvin J. Rudnitsky, Esq., Served as Board Chair 4/1/2005 to 4/1/2006
Gary G. Gentile, Esq., Served as Board Vice-Chair 4/1/2005 to 4/1/2006
and as Board Chair 4/1/2006 to 4/1/2007

Louis N. Teti, Esq.

Robert E. J. Curran, Esq.

Donald E. Wright, Jr., Esq.

Robert C. Saidis, Esq.

Jonathan H. Newman, Esq., Served as Board Vice-Chair 4/1/2006 to 4/1/2007

Marc S. Raspanti, Esq.

Laurence H. Brown, Esq.

Smith Barton Gephart, Esq.

Francis X. O'Connor, Esq.

Min S. Suh, Esq.

William A. Pietragallo, Esq.

* Robert L. Storey

* Marc S. Baer

Sal Cagnetti, Jr., Esq.

Carl D. Buchholz, III, Esq.

Charlotte S. Jefferies, Esq.

*non-lawyer members

Principal Staff Member/Contact Person

Joseph W. Farrell

Executive Director

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

Calendar Years	Informal Admonition	Private Reprimand	Probation	Public Censure	Suspend	Disbar	Grant Rein.	Deny Rein.	Year-end Totals
1973	37	0	0	0	3	3	1	1	45
1974	55	7	0	2	12	4	2	2	84
1975	95	8	0	5	12	6	2	2	130
1976	81	9	0	8	8	5	3	0	114
1977	96	7	2	10	10	13	3	0	141
1978	102	14	1	7	13	6	4	3	150
1979	121	5	0	6	17	12	2	1	164
1980	98	5	0	1	8	12	6	5	135
1981	113	4	0	1	17	21	42	4	202
1982	156	6	0	2	12	33	21	0	230
1983	137	9	0	6	7	24	22	0	205
1984	125	21	0	1	7	21	25	2	202
1985	123	19	0	3	16	16	21	0	198
1986	101	27	0	2	5	29	17	2	183
1987	110	17	0	3	10	23	24	1	188
1988	106	25	0	0	17	32	34	1	215
1989	123	31	0	2	17	18	27	0	218
1990	98	26	1	1	18	26	34	1	205
1991	115	46	1	4	10	27	35	0	238
1992	82	42	7	1	20	38	27	1	218
1993	85	30	5	0	12	20	29	1	182
1994	75	41	5	1	23	32	24	0	201
1995	74	48	7	6	26	35	44	1	241
1996	70	31	3	3	37	41	31	0	216
1997	106	46	8	3	33	40	35	2	273
1998	88	43	5	7	24	33	33	1	234
1999	48	26	7	4	23	29	45	4	186
2000	45	29	3	0	30	32	35	2	176
2001	40	35	10	2	27	31	55	3	203
2002	54	32	8	2	29	42	64	4	235
2003	58	36	8	1	31	38	58	4	234
2004	106	34	20	1	38	37	75	2	313
2005	109	26	24	2	51	37	72	1	322
2006	77	22	11	4	65 ^o	39 ¹	93 ²	1 ³	312
Total	3,109	807	136	101	687	855	1045	52	6,792

^o This figure includes **16** suspensions on consent (Rule 215 Pa.R.D.E.) but does not include **9** temporary suspensions (Rule 214 Pa.R.D.E.) and **3** temporary suspensions (Rule 208(f) Pa.R.D.E.)

¹ This figure includes **21** disbarments on consent (Rule 215 Pa.R.D.E.)

² This figure includes **77** reinstatements to active status after being inactive three or more years, **10** reinstatements after having been suspended, and **6** reinstatements after having been disbarred.

³ This denied reinstatement was after having been suspended.