

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 2007

Budget

For Fiscal Year 2006-2007, the Board's revenues totaled \$8,067,461 and expenses totaled \$8,236,675. Expenses exceeded revenues by \$169,214. After factoring in the unrealized gain on investments of \$1,080,873, revenues exceeded expenditures by \$911,659. 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 gains of \$318,082 in 2004-2005 and \$601,650 in 2005-2006, respectively.

On February 8, 2007, the annual Lawyer Assessment Committee telephone conference call took place. At that time, the Board submitted a Tentative Budget for Fiscal Year 2007-2008, which proposed a 2.16% increase in its Budget and projected that expenses would exceed revenues by nearly \$788,000. It was determined to recommend to the Supreme Court that the annual fees be reallocated for the Disciplinary Board and the PA Lawyers Fund to increase the Disciplinary Board's portion of the fee to \$140.00 per attorney and reduce the Lawyers Fund portion to \$35.00 per attorney. The Supreme Court granted this request.

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 **59,453** active paid attorneys as of December 31, 2007.

As the Court is aware from the number of disciplinary matters before it, 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 2007, **4,733** new complaints were received by the Office of Disciplinary Counsel. **4,612** complaints were disposed of during the year, **262** 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 2007, the Supreme Court ordered the disbarment of **25** attorneys and suspension of **48** attorneys for periods ranging up to five years (this does not include 16 attorneys who received interim 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.

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 2007 year, **30** Joint Petitions in Support of Discipline on Consent were filed with the Board, **12** of which were filed prior to scheduled disciplinary hearings. **25** Joint Petitions were approved and **4** were denied. Of those approved, **5** resulted in private discipline, **1** resulted in public censure and **19** resulted in suspensions. Because joint petitions may be filed in one year but not finally acted on until the following year, these two figures will not match.

Board Activities

During the year 2007, the Disciplinary Board met five (5) times. All of these meetings combined administrative and executive business. The Board cancelled its January 2007 Meeting due to the fact that it was anticipated there would only be approximately four adjudications, which did not justify the expense of holding a Meeting. At its executive sessions, the Board adjudicated **48** proceedings involving formal charges, which is a decrease of **10** from the number of proceedings adjudicated in 2006. This drop was again attributed to the number of Joint Petitions for Discipline on Consent being filed which obviated the need for the Board to formally consider these matters. Of the 48 major adjudications, **37** 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 **8** cases and considered **1** appeal by the Office of Disciplinary Counsel from a Reviewing Hearing Committee Member's determination. **16** respondents appeared before three-member Board panels to receive private reprimands. Finally, **4** Board Members conducted hearings on petitions to revoke and/or modify probation and **2** 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 2007, the Board Chair filed Reports with the Supreme Court recommending the reinstatement of **56** 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

During 2007, the Board published Notices of Proposed Rulemaking soliciting comments on proposed amendments to the following Rules:

1) 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, published for comment on January 27, 2007 – 3 comments received.

2) Amendment to Rule of Disciplinary Enforcement 402 relating to Confidentiality of Disciplinary Proceedings, published for comment on February 3, 2007 – no comments received.

In addition to the above proposed amendments, the following rule changes were approved by the Supreme Court in 2007:

Pa.R.D.E. 219(d) was amended by Order dated April 10, 2007, effective April 28, 2007 to require that attorneys provide their current residence and office addresses on their attorney annual fee forms; however, they may also provide a preferred mailing address different from those addresses. Attorneys are also required to select one of the three addresses for public access through the Board's website or upon written or oral request.

Pa.R.D.E. 402 was amended by Order dated May 23, 2007, effective June 9, 2007, to repeal Rule 402(c)(4) and to add new Rule 402(k) which would provide that a formal proceeding that becomes open to the public will subsequently be closed if it results in the imposition of private discipline or dismissal.

Pa.R.D.E. 102 was amended by Order dated June 26, 2007, effective July 14, 2007 to lower the criteria by which an experienced hearing committee member would be eligible or promotion to a senior hearing committee member.

At the time of the filing of this annual report, one additional proposed order amending the Pennsylvania Rules of Disciplinary Enforcement and the Rules of Professional Conduct is pending before the Supreme Court.

Finance & Pension Committee

In 2007, 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 2007-2008 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, KPMG LLP.

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 2007. The topics were "Rule 6.5 – Pro Bono Limited Legal Services to Clients", "Aging & Infirm Lawyers" and "Review of Reinstatement Procedures for Inactive Attorneys".

With respect to the Rule 6.5 topic, the Board's guest speaker was J. Richard Narvin, Chief Counsel of the Allegheny County Office of Conflict Counsel. The group discussed at length the impact Rules 1.2, 6.1 and 6.5 have on pro bono organizations which provide limited legal services to clients. With respect to the Aging & Inform Lawyers topic, the group reviewed the Final Report of the NOBC-APRL Joint Committee on Aging Lawyers. Finally, with respect to the last topic, the Board discussed the current reinstatement procedures for inactive status, reviewed the history of how these rules have changed over the years, and discussed whether inactive attorneys should be charged an annual fee and whether an attorney who fails to pay the annual fee should be administratively suspended for non-payment as opposed to transferred to inactive status.

The Education Committee also re-designed the program used at the Training Session for New Hearing Committee Members held on September 11, 2007 in Hershey. Of the 25 new Hearing Committee Members, only 2 were not in attendance. The program topics included a review of the Hearing Committee's role in the process, the practicalities of serving as members, types of discipline and how to determine discipline, the latest trends in both mitigation and aggravation, and a review of recent changes in the system, opinions handed down by the Supreme Court and changes in the Rules. Board Members and staff presented the program, along with guest speaker Ellen C. Brotman, who brought the perspective from respondents' counsel.

Communications Committee

The role of the Communications Committee is to provide oversight to the Board's 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. The Board had a mixed reaction to entering into yearly contracts for HPA's services, and instead, decided they would be retained on a month to month basis to provide support to the Board.

During 2007, HPA issued 12 press releases, including five feature articles. The press releases and articles received coverage across the Commonwealth by business journals, consumer newspapers, and major bar publications. HPA continued to produce and distribute the monthly attorney e-newsletter. Efforts were made to expand the distribution of the e-newsletter through attorney organizations, law professors, court administrators and others involved in the legal profession. In one year, the number of subscribers increased by nearly 10,000. HPA also worked with legal associations and organizations to link their website with the Disciplinary Board's website. Over 20 organizations responded and added this link.

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 2007 were from attorneys who were either active and not practicing law or were on inactive status and had no office address. A few other requests citing safety and/or security issues were also approved for no public access.

In September 2007, the Board approved the production of a DVD to educate attorneys and consumers on the disciplinary system in Pennsylvania by providing a general overview in a manner that is brief, interesting and easy to understand. Once produced, the DVD would be available for viewing on the Disciplinary Board's website and can also be provided to consumer associations and organizations (i.e. Rotary Clubs and the like).

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.

In June 2007, the Supreme Court approved amending Rule 102, Pa.R.D.E. to lower the criteria by which an experienced hearing committee member would be eligible for promotion to a senior member. The Board requested this change, due to the increasing number of cases where hearings into formal charges are stayed pending resolution of joint petitions for discipline on consent, and the number of joint petitions that have been approved. The Board anticipated there would be a shortage of experienced members who would qualify for senior status when they completed their first three-year term, if the criteria for promotion was not changed. As a result of this change, of the 35 experienced members who were eligible for reappointment to a second term on July 1, 2007, 33 were also eligible for promotion to senior status as opposed to only 15 members who would have been eligible under the prior Rule.

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. The also includes a research section which contains links to published Board Reports, recent Supreme Court Opinions and current copies of the Rules. In 2007, the Board added a Delinquent Hearing Committee Report section to this website to alert all members when reports are overdue.

In 2007, Hearing Committee Members received periodic 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, 2007, there are **90** Senior members, **68** Experienced members and **39** New members appointed by the Disciplinary Board who serve on a pro bono basis to conduct hearings.

Other Highlights in 2007

Publicizing Recent Discipline – One of the Board’s goals is to better inform the public when attorneys receive discipline. Previously, up-to-date information on disciplined attorneys was not readily available; there was a delay between the court order and the availability of the information to the public, lower courts and others. In late October 2007, the Board added a new component to its website to assure the public is informed of recent Supreme Court actions taken against attorneys. The new Discipline Table is on the Board’s Home page, and one click on the page, takes users to the Table which lists the discipline against attorneys during the last 60 days. The table contains the attorney’s name, the date of the order, action taken, and, where available, a link to the Board’s report or joint petition for discipline on consent. Within 24 business hours after a Supreme Court Order is entered, the case will be added to the table. Users can also access discipline going back to 2004, and these tables can easily be sorted by date, attorney last name, type of action taken, the county where the attorney is located and by attorney ID number.

Lobbying Disclosure Law – In November 2006, Act 134 of 2006 was adopted, and took effect in January 2007. A bi-partisan Lobbying Disclosure Regulations Committee was formed to create a new system for lobbying regulation and disclosure in Pennsylvania. The Department of State, State Ethics Commission, Attorney General and the Disciplinary Board will have responsibility for administration and enforcement of Act 134. Laura K. Mohney, Counsel to the Disciplinary Board, was appointed to serve on the Committee. The Act requires registration and reporting by any person or entity that is paid or pays to influence the actions of the General Assembly and/or the Executive Department. For attorneys, the Act applies to activities that in the past have been considered to be the practice of law rather than lobbying. After 38 public meetings, hearings and working sessions, over the past 11 months, the Committee published the proposed regulations for comment in the *Pennsylvania Bulletin*. Since the Disciplinary Board plays an integral role in this new Act, Ms. Mohney is to be commended for her willing participation in this rulemaking process for the Commonwealth.

National Meetings and Joint Dinners - In February 2007, Board Members Robert E. J. Curran, Robert C. Saidis, Laurence H. Brown and Board Secretary Elaine Bixler, attended the Fourth Annual Meeting of the National Council of Lawyer Disciplinary Boards (NCLDB) in Miami, Florida. In June 2007, Board Member Laurence H. Brown attended the ABA 33rd National Conference on Professional Responsibility in Chicago, Illinois. In September 2007, selected members of the Board and staff were, once again, invited to attend a working dinner with the PA Lawyers Fund for Client Security.

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 | 39 | 93 | 1 | 312 |
| 2007 | 85 | 16 | 6 | 3 | 48* | 25* | 64 [∞] | 2 [≈] | 249 |
| Total | 3,194 | 823 | 142 | 104 | 736 | 880 | 1109 | 54 | 7,042 |

* This figure includes **19** suspensions on consent (Rule 215 Pa.R.D.E.) but does not include **8** temporary suspensions (Rule 214 Pa.R.D.E.) and **8** temporary suspensions (Rule 208(f) Pa.R.D.E.)

♣ This figure includes **13** disbarments on consent (Rule 215 Pa.R.D.E.)

∞ This figure includes **47** reinstatements to active status after being inactive three or more years, **12** reinstatements after having been suspended, and **5** reinstatements after having been disbarred.

≈ This figure includes **1** reinstatement denied after having been suspended and **1** reinstatement denied after having been disbarred.