

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 2008

Budget

For Fiscal Year 2007-2008, the Board's revenues totaled \$8,817,614 and expenses totaled \$8,418,575. After factoring in the unrealized loss on investments of \$288,119, revenues exceeded expenditures by \$110,920. 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, \$601,650 in 2005-2006, and \$1,080,873 in 2006-2007, respectively.

On February 12, 2008, the annual Lawyer Assessment Committee telephone conference call took place. At that time, the Board submitted a Tentative Budget for Fiscal Year 2008-2009, which proposed a 2.3% increase in its Budget and projected that expenses would exceed revenues by approximately \$57,210, which is easily manageable for the Board. It was determined to recommend to the Supreme Court that the annual fees reallocation 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 be continued indefinitely.

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 **60,531** active paid attorneys as of December 31, 2008.

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 2008, **4,787** new complaints were received by the Office of Disciplinary Counsel. **4,943** complaints were disposed of during the year, **308** 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 2008, the Supreme Court ordered the disbarment of **38** attorneys and suspension of **45** attorneys for periods ranging up to five years (this does not include 13 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. When 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 2008 year, **40** Joint Petitions in Support of Discipline on Consent were filed with the Board, which is an increase of 10 from the number filed in 2007. **22** of those joint petitions were filed prior to scheduled disciplinary hearings. **33** joint petitions were approved and **3** were denied. Of those approved, **15** resulted in private discipline and **18** resulted in public discipline. As of December 31, 2008, **4** of the joint petitions filed in 2008 were not yet final.

Since consent discipline was adopted in Pennsylvania in 2005, **121** Joint Petitions in Support of Discipline on Consent were filed with the Board.

Board Activities

During the year 2008, the Disciplinary Board met six (6) times. All of these meetings combined administrative and executive business. At its executive sessions, the Board adjudicated **39** proceedings involving formal charges, which is a decrease of **9** from the number of proceedings adjudicated in 2007. 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 39 major adjudications, **31** were referred to the Supreme Court, together with the Board's Report and Recommendations. Of the remaining 8 cases, **4** resulted in Private Reprimands, **1** resulted in an Informal Admonition, and **3** were dismissed by the Board. 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 **12** cases and considered **1** appeal by the Office of Disciplinary Counsel from a Reviewing Hearing Committee Member's determination. **23** respondents appeared before three-member Board panels to receive private reprimands. Finally, **1** Board Member conducted a hearing on a petition to revoke and/or modify probation and **4** individual Board Members reviewed and approved the filing of petitions for emergency temporary suspension with the Supreme Court.

As a result of the decrease in the number of adjudications in the last two years, in September 2008, when the Board set the dates for the 2009 Board Meetings, it was decided to decrease the number of Board Meetings to five.

In addition to the matters considered at the regularly scheduled sessions of the Board in 2008, the Board Chair filed Reports with the Supreme Court recommending the reinstatement of **59** 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 2008, the Board published Notices of Proposed Rulemaking soliciting comments on proposed amendments to the following Rules:

1) Amendments to Rules of Disciplinary Enforcement 321 through 329 relating to Conservators for Interests of Clients, published for comment on August 16, 2008 – four comments received.

2) Amendments to Rules of Disciplinary Enforcement 203, 214, and 216 relating to Attorneys Convicted of Crimes and Reciprocal Discipline, published for comment on November 18, 2008 – one comment received.

3) Amendments to Rules of Disciplinary Enforcement 102, 201, 204, 217, 218, 219, 502, and 531 relating to Administrative Suspension, Reinstatement, and Assessing Inactive Fees, published for comment on November 18, 2008 – one comment received.

In addition to the above proposed amendments, the following rule changes were approved in 2008:

Pa.R.D.E. 219 and 502 were amended by Order dated April 1, 2008, effective immediately to change the annual fee allocation amounts for the Disciplinary Board and the Pa Lawyers' Fund for Client Security.

Rules of Organization and Procedure of the Disciplinary Board were amended to make conforming changes to its Rules to reflect the adoption of amendments to Pa.R.D.E. 102, 217(j), 219 and 402, which were approved by the Supreme Court. The Board also updated the address of the District IV Office in Pittsburgh.

Pa.R.D.E. 221 and RPC 1.15 were amended by Order dated September 4, 2008, effective September 20, 2008. The changes to RPC 1.15 permit attorneys acting as fiduciaries to exercise appropriate fiduciary judgment, make prudent investments, and administer fiduciary assets in accordance with law and accepted practice. The definition of "Financial Institution" is broadened to permit deposit of IOLTA funds in various instrumentalities in addition to traditional banks and savings and loan associations to the extent that such instrumentalities chose to qualify as "Eligible Institutions" under Pa.R.D.E. 221(h), as well as to permit investment of entrusted funds in or through such entities, consistent with the Prudent Investor Rule or other applicable law.

Pa.R.D.E. 208, 215 and 402 were amended by Order dated December 12, 2008, effective immediately. The amendments to Pa.R.D.E. 208 provide Disciplinary Counsel with the authority to dismiss complaints on the basis of Board policy or the exercise of prosecutorial discretion without the need to have the recommended disposition reviewed by a member of a hearing committee. The amendments to Rules 214 and 402 make it clear that resignation statements submitted by attorneys who have been placed on temporary suspension pursuant to either Rule 208(f)(1) or 214, are matters of public record.

Finance & Pension Committee

In 2008, 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 2008-2009 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. 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.

In May 2008, the Disciplinary Board named Carl D. Buchholz, III as their new representative on the IAB due to the retirement of Board Member Donald E. Wright, Jr.

Education Committee

The Education Committee designed the program for the Board's Educational Meeting in July 2008. The topics were "PA's Lobbying Disclosure Law" and "A Wide Assortment of Rule Changes recommended by ODC".

With respect to the Lobbying Disclosure Law topic, the Board's guest speaker was Dick Gmerek from Wolf Block Government Relations. The group discussed the law from the lawyer-lobbyists' view and the Board's role in the enforcement of the law. With respect to the Rule Changes topic, the Board discussed a wide range of recommendations made by the Office of Disciplinary Counsel concerning attorneys convicted of crimes, reciprocal discipline, administrative suspensions, reinstatements and assessment of annual fees.

The Education Committee also re-designed the program used at the Training Session and Refresher Course for all Hearing Committee Members held on September 16, 2008 in Hershey. 158 Hearing Committee Members attended the program. The program started with Justice J. Michael Eakin discussing the role of the Supreme Court in the disciplinary process. He was followed by Attorney Mark Flaherty, Co-Chair of the PBA Lawyers' Assistance Committee, who discussed the role the Committee plays in finding sobriety monitors for attorneys placed on substance abuse probation, and the difference between the role the Committee plays and Lawyers Concerned for Lawyers. The program then broke into two concurrent workshops. 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. Board Members and staff presented most of 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.

In May 2008, the Board was advised that Victoria Radabaugh had left HPA and was forming her own firm, Suasion, which was focusing on non-profit organization. Ms. Radabaugh was the principal staff person at HPA who worked with the Board on most of its projects. At that time, the Board took the opportunity to review the services being provided by an outside firm and whether there was a need to continue doing so. In July 2008, the Board reviewed the report listing the reasons why the Board needs a public relations firm and agreed that the firm does more education than public relations, and it was economically less expensive to go outside for the services they provide. The Board also agreed to retain Suasion as its communications firm, and Suasion agreed to bill the Board on an hourly basis rather than on a monthly retainer basis. There was a smooth transition from HPA to Suasion.

As of December 31, 2008, there were 40,302 subscribers to the monthly Attorney E-Newsletter.

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.

In 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 a 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.

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 were stayed pending resolution of joint petitions for discipline on consent, and the number of joint petitions that were being 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 criteria.

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 a number of 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 Website also includes a research section which contains links to published Board Reports, recent Supreme Court Opinions and current copies of the Rules.

As of December 31, 2008, there are **103** Senior members, **58** Experienced members and **32** New members appointed by the Disciplinary Board who serve on a pro bono basis to conduct hearings.

Other Highlights in 2008

Disciplinary Board Video - In the Fall of 2008, the Board released an informational video to educate attorneys and consumers on the disciplinary system in Pennsylvania. The video provides a general overview of the system in a manner that is brief, interesting and easy to understand. The video is available for viewing on the Disciplinary Board's website and a free DVD can also be ordered by attorneys, consumer associations and organizations through the Board's administrative offices in Lemoyne.

New Intake Procedures – In November 2008, the Office of Disciplinary Counsel instituted new intake procedures whereby one staff attorney has been delegated in each District Office to handle intake. This individual is responsible for reviewing all new complaints received by that Office and either disposing of the complaints by way of a dismissal letters or marking them for further investigation and/or action by the District Office. The Deputy Chief Disciplinary Counsel was appointed to oversee this new operation.

National Meetings – In January 2008, Board Member Laurence H. Brown attended the Meeting of the Conference of Chief Justices in Dallas, Texas at the Supreme Court's request. In February 2008, Board Member Francis X. O'Connor and Board Secretary Elaine Bixler, attended the Fifth Annual Meeting of the National Council of Lawyer Disciplinary Boards (NCLDB) in Los Angeles, California.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Board Members Serving During 2008

Gary G. Gentile, Esq.,	Served as Board Chair 4/1/2006 to 4/1/2007
Jonathan H. Newman, Esq.	Served as Board Chair 4/1/2007 to 4/1/2008
Smith Barton Gephart, Esq.	Served as Board Chair 4/1/2008 to 4/1/2009
Robert E. J. Curran, Esq.	Term Expired 4/1/2008
Donald E. Wright, Jr., Esq.	Term Expired 4/1/2008
Robert C. Saidis, Esq.	Term Expired 5/17/2008
Marc S. Raspanti, Esq.	
Laurence H. Brown, Esq.	
Francis X. O'Connor, Esq.	
William A. Pietragallo, Esq.	Served as Vice-Chair 4/1/2008 to 4/1/2009
* Robert L. Storey	Resigned 5/22/2008
* Marc S. Baer	
Sal Cagnetti, Jr., Esq.	
Carl D. Buchholz, III, Esq.	
Charlotte S. Jefferies, Esq.	
Stewart L. Cohen, Esq.	
Gerald Lawrence, Jr., Esq.	
David A. Nasatir, Esq.	
Gabriel L. Bevilacqua, 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	39	93	1	312
2007	85	16	6	3	48	25	64	2	249
2008	90	25	15	5	45*	38♣	82 [∞]	1«	301
Total	3,284	848	157	109	781	918	1191	55	7,343

* This figure includes **18** suspensions on consent (Rule 215 Pa.R.D.E.) but does not include **6** temporary suspensions (Rule 214 Pa.R.D.E.) and **7** temporary suspensions (Rule 208(f) Pa.R.D.E.)

♣ This figure includes **23** disbarments on consent (Rule 215 Pa.R.D.E.)

[∞] This figure includes **66** reinstatements to active status after being inactive three or more years, **13** reinstatements after having been suspended, **1** reinstatement from disability inactive status and **1** reinstatement after having been disbarred.

« This figure includes **1** reinstatement denied after having been suspended.