

Report of the Work of
The Disciplinary Board of the Supreme Court of Pennsylvania
601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625
For the Year 2009

Budget

For Fiscal Year 2008-2009, the Board's revenues totaled \$8,879,090 and expenses totaled \$8,873,448. After factoring in the unrealized loss on investments of \$737,052 expenditures exceeded revenues by \$731,410. The Board's invested funds experienced unrealized losses of \$288,119 in 2007-2008, \$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 6, 2009, the annual Lawyer Assessment Committee telephone conference call took place. At that time, the Board submitted a Tentative Budget for Fiscal Year 2009-2010, which proposed a 3.3% increase in its Budget and projected that expenses would exceed revenues by approximately \$544,987. It was determined to recommend to the Supreme Court that the reallocation of annual fees for the Disciplinary Board and the PA Lawyers Fund remain at \$140.00 per attorney for the Disciplinary Board and at \$35.00 per attorney for the Lawyers Fund.

At its Meeting in March 2009, the Board took some measures in order to save on expenses. The number of Board Meetings would be reduced from five to four for calendar year 2010, and out of state travel for Board Members would be banned for the balance of the year. The Board stressed, however, the importance for staff to continue participation in national organizations.

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 **59,353** active and **10,547** inactive paid attorneys as of December 31, 2009.

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 2009, **4,755** new complaints were received by the Office of Disciplinary Counsel. **4,695** complaints were disposed of during the year, **218** 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 2009, the Supreme Court ordered the disbarment of **29** attorneys and suspension of **40** attorneys for periods ranging up to five years (this does not include 24 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 2009 year, **34** Joint Petitions in Support of Discipline on Consent were filed with the Board. **9** of those joint petitions were filed prior to scheduled disciplinary hearings. **27** joint petitions were approved and **7** were denied. Of those approved, **15** resulted in private discipline and **12** resulted in public discipline. As of December 31, 2009, **1** of the joint petitions filed in 2009 was not yet final.

Since consent discipline was adopted in Pennsylvania in 2005, **156** Joint Petitions in Support of Discipline on Consent were filed with the Board.

Board Activities

During the year 2009, the Disciplinary Board met six (6) times. Five of these meetings combined administrative and executive business. One meeting was conducted by telephone conference call to consider two cases requiring expedited review. At its executive sessions, the Board adjudicated **32** proceedings involving formal charges, which is a decrease of **7** from the number of proceedings adjudicated in 2008. 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 32 major adjudications, **28** 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. Three-member review panels considered recommendations for summary Private Reprimands in **16** cases and considered **2** appeals by the Office of Disciplinary Counsel from Reviewing Hearing Committee Member determinations. **23** respondents appeared before three-member Board panels to receive private reprimands. Finally, **1** Board Member conducted a hearing on a contempt petition filed with the Board by Office of Disciplinary Counsel and **4** individual Board Members reviewed and approved the filing of petitions for emergency temporary suspension with the Supreme Court.

In May 2009, Rule 218, Pa.R.D.E. was amended to provide a new procedure for attorneys petitioning for reinstatement from inactive or retired status for more than three years. The new Rule provides that if Office of Disciplinary Counsel has no objection to the reinstatement and files a certification with the Board Secretary stating that after review of the petition and reasonably diligent inquiry, they have determined that there is no impediment to reinstatement and the petitioning attorney will meet his or her burden of proof under the Rule if the petition were to proceed to hearing, the petition and certification are referred to a member to the Board for review and to issue a report and recommendation in accordance with the Rule. If the assigned Board Member approves the reinstatement, the matter is forwarded to the Deputy Prothonotary of the Western District of the Supreme Court.

Due to this change in the Rules, Board Members reviewed and approved **71** reinstatements from inactive status in 2009, an increase of **12** from the prior year. In addition, this new procedure cuts down the processing time on these types of reinstatements from an average of six months to about three months. The costs charged to the petitioning attorney are also drastically reduced due to the elimination of the need for a hearing and the reduced number of copies being filed with the Court.

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 2009, the Board published Notices of Proposed Rulemaking soliciting comments on proposed amendments to the following Rules:

1) Amendments to Rules of Disciplinary Enforcement 214, 216, 218 and 219 (relating to criminal convictions, reciprocal discipline, reinstatements and periodic assessment of attorneys), as well as minor amendments to Rules 102, 201, 203, 204 and 217, published for comment on November 15, 2008, comments due January 16, 2009 – two comments received.

In addition to the above proposed amendments, the following rule changes were approved in 2009:

Pa.R.D.E. 321, 322, 324, 325, 327 and 328 were amended by Order dated March 26, 2009, effective April 11, 2009, to reflect the experience of the Board with conservatorships appointed to protect the interests of clients of absent attorneys under the Rules over the past several years.

Rule of Professional Conduct 1.15(u) was adopted by Order dated April 2, 2009, effective for the 2009-2010 assessment year, to provide that every attorney who is required to pay an active annual assessment under Pa.R.D.E. 219 shall pay an additional annual fee of \$25.00 for use by the IOLTA Board.

Pa.R.D.E. 102, 201, 204, 205, 217, 218, 219, 502, 531 and Rule of Professional Conduct 1.17 were amended by Order dated April 16, 2009, to create a new registration status of administrative suspension that distinguishes between attorneys who comply with the Pennsylvania Rules of Disciplinary Enforcement and Pennsylvania Rules for Continuing Legal Education, and those who do not and assessing inactive annual fees. Other changes reflect the experience during the past several years of the Office of Disciplinary Counsel and the Disciplinary Board with reinstatement matters under existing Rule 218. The amendments to Rules 102, 201, 204, 217, 218 and 219 relating to administrative suspensions, retired status and assessing inactive fees, took effect at the beginning of the 2009-2010 assessment year.

Pa.R.D.E. 205 was amended by Order dated April 3, 2009, effective immediately, to reduce the number of lawyer members on the Disciplinary Board to twelve members.

Pa.R.D.E. 504 was amended by Order dated April 27, 2009, effective immediately, to clarify that the confidentiality of claims filed with the PA Lawyers Fund does not prohibit disclosure of information to certain entities either while investigations are in progress or at any proceedings related thereto.

Rules of Organization and Procedure of the Disciplinary Board were amended effective May 30, 2009 to make conforming changes to its Rules to reflect the adoption of amendments to Pa.R.D.E. 219(a), 502(b), 221, 208(a), 215(c), 402(c) and 205 which were approved by the Supreme Court.

Pa.R.D.E. 208(f)(1) was amended by Order dated July 24, 2009, effective August 23, 2009, to permit the Court to issue an order directing the president judge of the county where the respondent is located to take such further action and make such further orders as may be necessary to protect the rights and interests of a fugitive or non-responsive lawyer's clients before a rule to show cause is issued by the Court.

Pa.R.D.E. 203, 214 and 216 were amended by Order dated July 29, 2009, effective August 28, 2009, to provide that Disciplinary Counsel and a respondent-attorney may file a joint petition for temporary suspension with the Court at any time before or after a

guilty plea. In addition, the amendments to Rule 216 recognizes the different types of discipline imposed in other jurisdictions.

Rules of Organization and Procedure of the Disciplinary Board were amended effective August 8, 2009 to make conforming changes to its Rules to reflect adoption of amendments to Pa.R.D.E. 321, 322, 324, 325, 327, 328, 102, 201, 204, 205, 217, 218, and 219, which were approved by the Supreme Court.

Rules of Organization and Procedure of the Disciplinary Board were amended effective November 21, 2009 to update the addresses of Chief Disciplinary Counsel, the Board's District III Office, and the Office of the Secretary.

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

Finance & Pension Committee

In 2009, 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 2009-2010 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 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 four Court-affiliated Boards involved are the Disciplinary Board, the PA Lawyers Fund for Client Security Board, the PA Continuing Legal Education Board, and the Pennsylvania Board of Law Examiners.

Board Vice-Chair Carl D. Buchholz, III, serves as the Disciplinary Board's representative on the IAB. Throughout the year, he updated the Board on the performance of the funds invested through the IAB.

Education Committee

The Education Committee designed the program for the Board's Educational Meeting in July 2009. The topics were "How the PA System Works", "Client Bill of Rights" and "Survey Results".

With respect to the How the PA System Works topic, the Board's guest speaker was Justice Max Baer. Chief Disciplinary Counsel described the workings of the Office of Disciplinary Counsel, the Board Secretary presented a slide show on the procedures before the Board and reviewed new responsibilities for Board Members. Justice Baer described what happens to cases after they are filed with the Supreme Court. Due to the number of newer Board Members, everyone was very appreciative of the tutorial on how the system works and were very interested in the presentation by Justice Baer.

With respect to the other topics, the Board debated the merits of adopting a Client Bill of Rights and reviewed a summary of the survey results conducted by the Board's communications firm on the monthly Attorney E-Newsletter and the Board's Website.

Due to the planned relocation of the Board's executive offices in September 2009, the Board determined not to hold a September Board Meeting or to have a training session for hearing committee members.

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. In July 2008, the Board 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.

In 2009, Suasion revised the layout of the Board's complaint brochure to make it more appealing to the consumer audience. They created PDF fillable forms for attorney registration and reinstatement which enable attorneys to type the information in the forms online and print the final product. As mentioned in the Education Committee section,

Suasion created an online survey to determine the perceptions of the Attorney E-Newsletter and Disciplinary Board's website and to receive feedback for improvement. Suasion analyzed the results and produced a detailed report and a list of recommendations for changes to the Board.

As of December 31, 2009, there were 44,194 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 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 and 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.

In 2009, Suasion installed Google Analytics to each page of the website which allowed them to compile statistics on the number of visitors to the Board's website. From August through December 2009, **66,615** unique visitors accessed the site, and an average of **1,285** visitors accessed the site daily. The top pages visited were: Look up Attorney, Attorney Home Page and Recent Supreme Court Actions. The website was also updated periodically to add new Rules, update the FAQ sections and update all of the pages that contained the addresses for the offices located in the Harrisburg area.

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 the Board 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.

Due to the decreasing number of cases requiring hearings before Hearing Committees and in an effort to reduce expenses, it was decided by the Board not to replace those Members whose terms expired on July 1, 2009, and who were not eligible for reappointment. This totaled 28 members. This also factored into the Board's decision not to have a training session in 2009.

As of December 31, 2009, there are **108** Senior members, **51** Experienced members and **4** New members appointed by the Disciplinary Board who serve on a pro bono basis to conduct hearings.

Other Highlights in 2009

Office Relocations – In the Summer of 2009, the District III Office of Disciplinary Counsel moved to 100 Pine Street in Harrisburg. Chief Disciplinary Counsel and the Board's Executive Offices moved to the new Pennsylvania Judicial Center at 601 Commonwealth Avenue in Harrisburg.

On-line Address Changes – In May 2009, the Board improved its Website by offering online address updates. Lawyers are now able to change any of their registered addresses by accessing the online form. The information is submitted to the Attorney Registration Office automatically. Upon submission of the address change, an acknowledgment is generated notifying the lawyer that the change has been received. Those who do not wish to update their address online, still have the ability to print and mail an address change to the Board's Attorney Registration office.

Interbranch Commission on Juvenile Justice – In October 2009, the Board Vice-Chair testified before the Commission on Juvenile Justice. He was questioned extensively on how the Board functions and provides oversight to the Office of Disciplinary Counsel. He was also questioned about reporting misconduct of judges if attorneys have knowledge of misconduct.

National Meetings – In February 2009, Board Member Francis X. O'Connor, Board Secretary Elaine Bixler and Hearing Coordinator, Marcee Sloan, attended the Sixth Annual Meeting of the National Council of Lawyer Disciplinary Boards (NCLDB) in Boston, Massachusetts.

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
2009	62	23	9	4	40*	29♣	84 [∞]	3«	254
Total	3,346	871	166	113	821	947	1275	58	7,597

* This figure includes 11 suspensions on consent (Rule 215 Pa.R.D.E.) but does not include 12 temporary suspensions (Rule 214 Pa.R.D.E.) and 12 temporary suspensions (Rule 208(f) Pa.R.D.E.)

♣ This figure includes 16 disbarments on consent (Rule 215 Pa.R.D.E.)

∞ This figure includes 71 reinstatements to active status after being inactive three or more years, 11 reinstatements after having been suspended, and 2 reinstatements after having been disbarred.

≈ This figure includes 2 reinstatements denied after having been suspended suspended and 1 reinstatement denied after having been disbarred