

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 2013

Budget

For Fiscal Year 2012-2013, the Board's revenues totaled \$9,645,390 and expenses totaled \$10,151,323. After factoring in the unrealized gain on investments of \$987,152, revenues exceeded expenditures by \$481,219. The Board's invested funds experienced unrealized losses of \$737,052 in 2008-2009, \$288,119 in 2007-2008 and \$140,000 in 2011-2012 and saw gains of \$1,476,300 in 2009-2010 and \$1,481,533 in 2010-2011, respectively.

On February 6, 2013, the annual Lawyer Assessment Committee telephone conference call took place. At that time, the Board submitted a tentative Budget for Fiscal Year 2013-2014, which proposed a 1.55% increase in its Budget and projected that expenses would exceed revenues by approximately \$700,535. This Budget was based on an annual fee allocation of \$130.00 per attorney for the Disciplinary Board.

By Order dated February 12, 2013, the Supreme Court ordered that the fee allocations that were in place for the 2012-2013 Fiscal Year remain in effect for the 2013-2014 Fiscal Year. That allocation provided for annual fees of \$130.00 per attorney for the Disciplinary Board, \$35.00 per attorney for the PA Lawyers Fund and \$35.00 per attorney for the IOLTA Board.

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 **63,633** active and **10,634** inactive paid attorneys as of December 31, 2013.

The efficient disposition of complaints is a matter that the Board is continually required to keep under review. During the year 2013, **4,316** new complaints were received by the ODC. **4,281** complaints were disposed of during the year, **230** 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 2013, the Supreme Court ordered the disbarment of **40** attorneys and suspension of **32** attorneys for periods ranging up to five years (this does not include 12 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 2013 year, **28** Joint Petitions in Support of Discipline on Consent were filed with the Board. **16** of those joint petitions were filed prior to scheduled disciplinary hearings. **19** joint petitions were approved and **6** were denied. Of those approved, **4** resulted in private discipline and **14** resulted in public discipline. As of December 31, 2013, **3** of the joint petitions filed in 2013 were not yet final.

Since consent discipline was adopted in Pennsylvania in 2005, **274** Joint Petitions in Support of Discipline on Consent were filed with the Board.

Board Activities

During the year 2013, the Disciplinary Board met five (5) times. All of these meetings combined administrative and executive business. At its executive sessions, the Board adjudicated **35** proceedings involving formal charges. Of the 35 major adjudications, **26** 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 **6** matters. Three-member review panels considered recommendations for summary Private Reprimands in **7** cases, summary Public Reprimands in **6** cases and considered **1** appeal by the ODC from a Reviewing Hearing Committee Member determination. **14** respondents appeared before three-member Board panels and received private reprimands and **11** respondents received public reprimands. Finally, **1** Board Member conducted a probation violation hearing, **1** Board Member conducted a hearing on a petition to dissolve a temporary suspension, and **1** Board Member reviewed and approved the filing of a petition for emergency temporary suspension.

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 ODC 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.

In 2013, Board Members reviewed and approved **75** reinstatements from attorneys on inactive status, retired status or administrative suspension for more than three years. 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. Since the one-year grace period expired in September 2010 for delinquent and CLE non-compliant attorneys to petition for reinstatement before they were transferred from involuntary inactive status to administrative suspension, the high volume of petitions reinstatements filed with the Board in 2010 and 2011 have dropped off and are now back to normal levels.

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 2013, the following proposed amendments were approved:

Pa.R.D.E. 219(a), and 502(b) and RPC 1.15(u) – Amended by Order dated February 12, 2013 the Court directed that the annual fee allocations effectuated by Order of April 9, 2012 shall remain in effect for the for the 2013-2014 assessment year. Those annual fee allocations provide an annual fee of \$130.00 for the Disciplinary Board, an annual fee of \$35.00 for the PA Lawyers Fund for Client Security, and an annual fee of \$35.00 for the IOLTA Board.

Rules of Professional Conduct - Amended by Order dated October 22, 2013, effective November 21, 2013. Rules 1.0, 1.1, 1.4, 1.6, 1.17, 1.18, 4.4, 5.3, 5.5, 7.1, 7.2 and 7.3 were amended to address the need for changes in Detection of Conflicts of Interest, Outsourcing, Technology and Client Development, and Technology and Confidentiality.

In addition to the above Rule changes, the Board published a Notice of Proposed rulemaking soliciting comments on proposed amendments to the following Rules:

Rules of Professional Conduct 1,0, 1,1, 1.4, 1.6, 1.17, 1.18, 4.4, 5.3, 5.5, 7.1, 7.2, and 7.3 (relating to changes recommended by the ABA Commission on Ethics 20/20). published for comment on April 13, 2013, comments due May 16, 2013 – no comments were received.

In May 2013, the Pennsylvania Bar Association sent to the Board and the Supreme Court a proposal to amend Rules of Professional Conduct 5.5 and 8.5. However, upon closer review, the proposed amendments to Rule 5.5(d)(1) would be inconsistent with Pa.B.A.R. 302 as it is presently written because Rule 5.5 recognizes licensure of foreign attorneys as In-House Counsel while Rule 302 does not. As a result, the Board referred the proposal back to the Bar Association with the request it coordinate the proposed changes with the Pennsylvania Board of Law Examiners to eliminate the inconsistency between the Rules.

Finance & Pension Committee

At its Meeting in July 2013, the Disciplinary Board approved some changes to its Annual and Sick Leave Policies to make them more consistent with the Policies in effect for the unified judicial system maintained through the Administrative Office of Pennsylvania Courts. Effective January 1, 2014, the maximum amount of Annual Leave that may be carried over from one year to the next is 45 days and the maximum amount of Sick and Disability Leave that may be carried over from one year to the next is 200 days.

The Committee reviewed and approved the proposed Budget for Fiscal Year 2013-2014. The Committee also reviewed the audit performed by the Board's auditors, KPMG LLP.

In accordance with the amendments to Rule 219(f) that took effect as of July 1, 2013, the Committee recommended and the Board approved the assessment of an automatic late payment penalty of \$150.00 on attorneys who failed to complete registration by July 31. A second, non-waivable late payment penalty of \$150.00 was recommended and approved by the Board to be added to the delinquent account of any attorney who failed to complete registration by August 31st.

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 Gerald Lawrence was the Board's representative on the IAB until his term on the Board expired on April 1st. Throughout the year, Mr. Lawrence updated the Board on the performance of the funds invested through the IAB. Board Member David E. Schwager has been appointed to succeed Mr. Lawrence as the Board's representative.

Education Committee

The Education Committee designed the program for the Board's Educational Meeting in July 2013. The first topic under discussion related to Conservatorships and whether Rules should be adopted regarding file retention and establishment of a succession plan by attorneys. The Board's Counsel reviewed the history of the Braun standard – what it is and how it has been applied in decided cases. Board Member Patricia M. Hastie did an outstanding presentation on personality disorders and how they are used to meet the Braun standard, and Board Member

Douglas W. Leonard did a stellar presentation on what motivates people and how the Board could use this as an effective tool in determining appropriate discipline. The Board was very lucky to have Justices Baer, Eakin and Todd participate in the program.

The Education Committee also designed the program used at the Training Session for new Hearing Committee Members held on October 10, 2013 in Hershey. A total of **41** new Hearing Committee Members and Board Members attended the program. The program started with Justice J. Michael Eakin speaking on the role the Supreme Court has in the disciplinary process. 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. Two Senior Hearing Committee Members, Scott H. Mustin and Marc P. Weingarten, shared some practical tips on what actually happens at hearings. After lunch, Mark F. Flaherty, Co-Chair of the PBA Lawyers' Assistance Committee, discussed the role the Committee plays in finding sobriety monitors for attorneys placed on substance abuse probation; the difference between the role of that Committee and Lawyers Concerned for Lawyers and the part alcoholism plays in the disciplinary system. 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, increase visibility, and to explore ways of improving communications with the general public, attorneys, law students and others.

In July 2008, the Board retained Suasion as its communications firm. Their primary function is to provide support for the Board's website and distribute the monthly Attorney E-Newsletter. As of December 31, 2013, there were 67,790 subscribers to the monthly Attorney E-Newsletter, an increase of 4,766 from 2012.

During 2013, the Communications Committee and Board staff worked to update and print additional copies of the consumer brochure in both Spanish and English. The goal was to increase awareness of the Disciplinary Board and to ensure that consumers know where to turn should they need assistance. To that end, Suasion researched appropriate organizations for distribution including: PA Hispanic Community Centers, Agencies on Aging, Community Health Centers, Legal Organizations, Libraries, Rural Health Clinics, Senior Centers, YMCAs and YWCAs, County Assistance Offices, Centers for Independent Living and Youth and Family Services. Suasion mailed bulk copies of the new brochures to 1,441 organizations across the Commonwealth and conducted follow-up phone calls to confirm that the brochures were received and were on display or being distributed to target audiences.

In 2013, Suasion also updated a number of items and Rules on the website at the request of staff. They wrote and distributed press releases and articles concerning online attorney registration and appointments and reappointments to the Disciplinary Board. They drafted and distributed two email blasts to attorneys concerning deadlines for attorney registration and how to do online registration.

Disciplinary Board Website

On June 25, 2003, the Disciplinary Board launched its Website at www.padisiplinaryboard.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 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 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 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 Recent Supreme Court Action tab is on the Board's Home page, and one click on the tab 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 2010, 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 the Fall of 2012, the Board launched a new mobile-friendly website. The new website is now more accessible on various devices, including PCs, smartphones, iPads and more. The information and content has not changed, but how the information appears will be different based on the device being used. The Look Up Attorney section was upgraded to include a "Show/Hide Column" which allows users to choose which specific details they want or don't want to see regarding that attorney. This is especially helpful when trying to access the information on a smaller device, such as a smartphone.

During the 2013 year, **220,201** unique visitors accessed the site, and an average of **596,092** multiple visits by the same computers/visitors accessed the site during the year. The top pages visited were: Look up Attorney, Attorney Home Page, Recent Supreme Court Actions, Online Address Change and Consumers Home Page. 69% of the visits were made from Pennsylvania, with the top five locations being Philadelphia, Pittsburgh, Harrisburg, Norristown and West Chester. 51.79% of the traffic used search terms to find the site, 6.98% came from referral sites (such as the PBA and PA Board of Law Examiners), and 41.23% was direct traffic where the user typed the Board's web address into a browser.

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, the Board 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.

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 or sends an email 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, there have been very few Board Meetings where any Hearing Committee Reports were reported as overdue.

In August 2005, the Board launched a page on its Website exclusively for the use of Hearing Committee Members and Board Members. This section 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 section also includes a research page which contains links to published Board Reports, a bank of Supreme Court Opinions and current copies of the Rules.

As of December 31, 2013, there are **150** Hearing Committee Members, consisting of **52** Senior members, **57** Experienced members and **41** New members appointed by the Disciplinary Board who serve on a pro bono basis to conduct hearings.

Other Highlights in 2013

All-Counsel Meeting – On April 25 & 26, 2013, the Office of Disciplinary Counsel held a Meeting in the PA Judicial Center in Harrisburg which consisted of staff attorneys, investigators and administrative support staff. Board Members R. Burke McLemore, Jr., and Jane G. Penny participated in the program. All attendees thought the program was very beneficial and it is anticipated similar meetings will be held every two years.

Document Management & Case Management Systems – In early 2013, the Board approved the search for upgrades to the Board's Case Management System which was 20 to 25 years old and the purchase of a Document Management System for the Office of Disciplinary Counsel (ODC) staff which had no prior system. The Board's Executive Offices were utilizing DocuWare software for their document management, and the ODC purchased an upgraded version of that software and scanners for each of the District Offices and the Chief Counsel's Office. Select ODC staff were trained on the use of the new software.

The search for a new Case Management System was more problematic. A Search Committee was established which consisted of the Chief Disciplinary Counsel, Board Secretary, the Director of Finance and a District Counsel in Charge. The Committee visited the attorney discipline offices in Illinois and Colorado during the Spring and Summer of 2013. While both offices are using different software, we were informed that both took extensive programming time and money to conform the packages to how their individual jurisdictions operated. The Search Committee recommended and the Board approved the retention of a consultant to review the various software packages being used by other jurisdictions and make a recommendation on the best way to proceed.

After interviewing current system users and a few months of research, the consultant recommended a custom software solution rather than purchasing a premade software package. The custom solution will allow the Board to have the system designed to specifically meet the exact needs of the Board and ODC staff, including e-filing, as well as integrate it with the DocuWare software currently being used for document management. The Board contracted with a software development firm and anticipates that the new system will be up and running before the end of 2014.

Attorney Registration – For the 2013-2014 Fiscal Year, 32% of attorneys registered online, which was a slight increase from the prior year. Improvements were made to the online registration system operated through the Unified Judicial System's PACFile system. The Board established a lock box at Fulton Bank to process paper forms and checks. The registration system was revamped for the new Fiscal Year and improvements were made on processing payments. It went much more smoothly than it had in past years. In 2014, efforts will be made to encourage more law firms to use the online payment option.

National Meetings – In February 2013, Board Members, R. Burke McLemore, Jr., and Douglas W. Leonard, Board Secretary Elaine Bixler and Assistant Secretary, Marcee Sloan, attended the Tenth Annual Meeting of the National Council of Lawyer Disciplinary Boards (NCLDB) in Dallas, Texas.

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA
Calendar Years

Calendar Years	Informal Admon.	Private Reprimand	Public 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
2010	55	16		8	2	34	45	106	1	267
2011	75	19		15	3	49	32	105	2	300
2012	56	15	9	11	5	50	36	88	2	272
2013	48	13	9	8	1	32 ¹	40 ²	80 ³	2 ⁴	233
Total	3,580	934	18	208	124	986	1,100	1,654	65	8,669

¹ This figure includes **13** suspensions on consent (Rule 215 Pa.R.D.E.) but does not include **4** temporary suspensions (Rule 214 Pa.R.D.E.) and **8** temporary suspensions (Rule 208(f) Pa.R.D.E.)

² This figure includes **20** disbarments on consent (Rule 215 Pa.R.D.E.)

³ This figure includes **69** reinstatements to active status after being inactive, retired or administratively suspended three or more years, **8** reinstatements after having been suspended and **3** reinstatements after having been disbarred.

⁴ This figure includes **1** reinstatement denied after being suspended and **1** after being inactive three or more years.