

**Disciplinary
Board
of the
Supreme
Court**

2002 Membership:

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Richard W. Stewart, Esq.
Louis N. Teti, Esq.
Lisa A. Watkins, Esq.
Donald E. Wright, Jr., Esq.

Staff:

Elaine M. Bixler, *Executive Director & Secretary*

Legal Authorization:

Pa. Constitution, Article V, § 10(c)
Rule 103, Pa. Rules of Disciplinary Enforcement
Rule 205(a), Pa. Rules of Disciplinary Enforcement
Rule 205(c), Pa. Rules of Disciplinary Enforcement

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History/Background

The Disciplinary Board was created by the Supreme Court in 1972 to consider and investigate the conduct of any person subject to the Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.). Such persons include:

- any attorney admitted to practice law in Pennsylvania
- any attorney of another jurisdiction specially admitted to the bar of the Supreme Court for a particular proceeding
- any disbarred, suspended or inactive attorney, with respect to violation of any rules committed prior to disbarment, suspension or transfer to inactivity
- any justice, judge or district justice, with respect to any violation of rules committed prior to taking office, if the Judicial Conduct Board declines jurisdiction
- any attorney who resumes practice of law with respect to any nonjudicial acts performed while in office as a justice, judge or district justice.

Investigations may be initiated by the Disciplinary Board on its own motion or upon complaint from another person. (See Pa.R.D.E. Rules 103, 205(a) and 205 (c)(1)(2).)

Through December 2002, 54,598 active attorneys were registered in Pennsylvania, an increase of 0.99% over 2001.

During 2002, 4,998 complaints were filed with the Disciplinary Board, an average of 416 per month and an increase of 5.49% from last year.

Of the 4,998 new complaints received plus 812 complaints active at the start of the year, 4,927, or 84.8%, were disposed of, including 3,088 dismissed as lacking substance. At the start of 2003, 883 active complaints remained.

2002 Activities

The board met seven times in 2002. The results of the executive sessions can be found in Table 3.8.1 on page 68. A tabulation of the disciplinary actions taken since the beginning of the board's operations in 1972 is set forth on Table 3.8.2 on page 70. Comparisons of cumulative actions taken and actions taken in 2002 can be found in Chart 3.8.3 on page 72.

Rules Committee

The Rules Committee met and considered amendments to various Pennsylvania Rules of Professional Conduct (Pa.R.P.C.), Pa.R.D.E., and Disciplinary Board Rules and Procedures (D.B.R.P.). Several proposed amendments were published for comment as follows:

Pa.R.D.E. 218: Would give the office of disciplinary counsel 60 days to investigate and respond to **petitions for reinstatement** prior to referral to a hearing committee

Pa.R.D.E. 203, 207 and 208: Would provide that failure to comply with orders of the Court, the board, hearing committees or a special master as well as any inquiry from them or the office of disciplinary counsel shall be grounds for **discipline**; to require responses to inquiries and answers to petitions for discipline; and to state that the consequence of a failure to answer a petition for discipline will be to hold all factual allegations and disciplinary charges to be admitted.

In addition to the above-proposed amendments, the following rule changes were approved by either the board or the Supreme Court:

Board Rule 85.10: Provides that the generally applicable four-year **period within which complaints must be submitted** will be tolled while litigation is pending that results in a finding of ineffective assistance of counsel or prosecutorial misconduct.

Board Rules 89.57, 89.58 and 89.72: Require the scheduling a **prehearing conference** in all cases, to be held not less than 30 days before a hearing.

Rule 402(c): Permits **chief disciplinary counsel** to independently contact qualified mental health agencies or programs dealing with alcoholism or substance abuse with a request that the agency or program contact the respondent-attorney.

Finance & Pension Committee

In February 2002 the board reviewed a new three-year projection prepared by its auditors, KPMG. Three separate forecasts were prepared with assumptions remaining unchanged except for the annual registration fee. The fee was presented at \$105, \$130 and \$155. The new projections supported the board's recommendation for a fee increase in 2001. Based on the forecast presenting the fee at \$130, which is the fee amount approved by the Supreme Court, however, it is anticipated that beginning in 2004, expenses will once again exceed income.

During the spring of 2002, the Finance & Pension Committee reviewed the board's salary administration policy and the issue of salary caps and pay ranges for board staff. It was decided that the board ask Michael A. Sponsler, senior compensation analyst with the Administrative Office of Pennsylvania Courts, to review the current pay levels for non-legal staff and make recommendations regarding those levels. A three-member ad hoc committee was appointed to review the recommendations made by Mr. Sponsler and report to the board.

Following review of the recommendations made by the ad hoc committee, the board adopted the open-band pay plan with self-adjusting salary cap of the Administrative Office of Pennsylvania Courts, to be effective July 1, 2003. The plan provides for 14 open pay bands in which board employees will be slotted.

Finally, the committee approved the budget for fiscal year 2002-03, monitored the monthly financial reports prepared by the office of the secretary and made recommendations to the board concerning investments and ways to limit spending and avoid unnecessary expenses.

Education Committee

The Education Committee prepared and presented the program at the training session for newly appointed hearing committee members and the refresher course for experienced members on August 8, 2002. One hundred thirty-six hearing committee members attended.

The Education Committee also designed the program for the board's retreat meeting in the fall of 2002. The first topic was "Ethics 2000." During that portion of the meeting, the board met with representatives of the Pennsylvania Bar Association Legal Ethics & Professional Responsibility Committee to review the committee's recommendations to the Pennsylvania Rules of Professional Conduct based on changes to the American Bar Association Model Rules of Professional Conduct adopted in 2002.

The second topic was "How We Do Business." For that topic the board reviewed the rules and procedures governing the operations of the office of disciplinary counsel and the office of the secretary and how the board exercises its oversight function of those two offices. In addition, the board reviewed delays in all stages of the disciplinary process and discussed ways to speed up the process and improve the system.

Hearing Committees

As of December 31, 2002, 177 regular Hearing Committee members and 24 alternate members appointed by the Disciplinary Board were serving on a *pro bono* basis to conduct hearings.

Web Site

In October 2001 the more than 150 unpublished Disciplinary Board reports and opinions were posted on the Unified Judicial System's Web site. During 2002 the board began exploring the possibility of establishing its own Web site with a goal of launching the site in the summer of 2003. Possible items for the new site include an attorney registration database for users to access admission and address information for Pennsylvania attorneys; complaint procedures and complaint forms, which could be downloaded for consumers; and forms and procedures for attorneys regarding annual registration and reinstatement. It is anticipated that the unpublished reports and opinions will remain on the Court's Web site with links from the new board site.

Publication of Non-Sanitized Board Reports

On December 14, 2002, the Supreme Court authorized the board to begin publishing non-sanitized board reports for those cases in which the Supreme Court issues a final order imposing public discipline. The new publication policy does not affect private discipline matters or board reports in public discipline matters decided by the Court prior to December 14, 2002.

Chief Disciplinary Counsel

In early September 2002, Attorney John L. Doherty retired as chief disciplinary counsel. During his ten years of service to the board, Mr. Doherty increased professionalism and

2002 Executive Session Results

Action	Total
Adjudications involving formal charges	45
Cases resolved by three-member panels of board members who reviewed hearing committee members' recommendations for private reprimand [Rule 208(a)(5) Pa. R.D.E.]	29
Respondents appearing before board to receive private reprimands	34
Oral arguments before three-member panels of board members	11
Board referrals to Supreme Court, including report and recommendation for public discipline	34
Supreme Court orders for disbarment on consent (resulting from verified statements submitted by respondents)	22
Supreme Court orders reinstating previously disbarred or suspended attorneys*	5*
Disbarred attorneys reinstated	15.
Supreme Court denials for reinstatement	4+
Petitions for reinstatement to active status to attorneys inactive more than three years with no discipline involved	54

*Action taken following hearing on petition for reinstatement
 +One after having been suspended and three after having been disbarred

Table 3.8.1

education on trial tactics for staff attorneys, structured new courtrooms in each of the district offices and increased office of disciplinary counsel visibility in the legal community. It was a decade of massive computerization -- from statewide automation and communication between the courts and the board offices to access of on-line legal information to aid in preparation of trial documents.

Mr. Doherty's successor as chief disciplinary counsel is attorney Paul J. Killion from Harrisburg. Mr. Killion has a varied background, having worked for the United States Attorney's Office for the middle district of

Pennsylvania, the United States Department of Justice, the Attorney General's Office in the Commonwealth of Pennsylvania and as a private practitioner.

Contact Person

Anyone having questions about the Disciplinary Board may contact Elaine M. Bixler, Secretary to the Board, at (717) 731-7073 or write in care of the board to First Floor; Two Lemoyne Drive; Lemoyne, PA 17043. AOPC