

2004 Membership:

Richard W. Stewart, Esq., *Chair+*
Louis N. Teti, Esq., *Chair++*
Marvin J. Rudnitsky, Esq., *Vice Chair#*
Laurence H. Brown, Esq.
Robert E. J. Curran, Esq.
Lori A. Flickstein, Esq.*
Gary G. Gentile, Esq.
Smith Barton Gephart, Esq.
C. Eugene McLaughlin
Jonathan H. Newman, Esq.
Nikki P. Nordenberg▲▲
Francis X. O'Connor, Esq.
J. Michele Peck###
William A. Pietragallo, Esq.▲
Mark S. Raspanti, Esq.
Robert C. Saidis, Esq.
Martin W. Sheerer, Esq.
Min S. Suh, Esq.**
Donald E. Wright, Jr., Esq.

* Resigned 2-19-04

** Appointed 2-19-04

+ Term expired 4-1-04

++ Appointed chair effective 4-1-04

Appointed vice chair effective 4-1-04

Term expired 4-1-04

▲ Appointed 4-1-04

▲▲ Appointed 4-5-04

Staff:

Joseph W. Farrell, *Executive Director*

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

About the Board:

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.) *continued...*

Disciplinary

Board

of the

Supreme

Court

First Floor

Two Lemoyne Drive

Lemoyne, PA 17043

(717) 731-707

www.padisciplinaryboard.
org

Such persons include:

- any attorney admitted to practice law in Pennsylvania
- any attorney from 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 jurist 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 jurist.

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).)

2004 Statistics	
Attorneys	55,325
Change from 2003	0.80%
Complaints file with board	4,891
Change from 2003	(2.43)%
Pending at start of 2004	1,003
Complaints disposed of	4,887
Total complaints resulting in discipline	326
Total pending at end of 2004	1,007

Table 3.8.1

2004 Activities

Statistics for 2004 can be found in Table 3.8.1 above.

The board met six times in 2004. The results of the executive sessions can be found in Table 3.8.2 on page 62. A tabulation of the disciplinary actions taken since the beginning of the board's operations in 1972 is set forth on Table 3.8.3 on page 65. Comparisons of cumulative actions taken and actions taken in 2004 can be found in Chart 3.8.4 on page 67.

At the board's request, the chief disciplinary counsel, the new executive director and the secretary of the board have taken steps to expedite the disposition of complaints. The board recognizes that complainants and respondents deserve to have their cases handled in a timely manner. A number of changes in procedures and productivity have served to reduce significantly the time it takes to process a case.

Rules Committee

The following rule changes were approved by either the board or the Supreme Court or became effective in 2004:

New Pa.R.P.C.1.19 and amendment to the Comment to Pa.R.P.C.1.6: Requires **lawyers acting as lobbyists** to comply with registration and disclosure laws, regulations or rules enacted by the executive or legislative branches of state government; authorizes disclosure of information related to client representation in order to comply with disclosure laws; and reiterates that all such compliance actions by a lawyer-lobbyist must be consistent with the Rules of Professional Conduct. Adopted 12-22-03, effective 1-3-04.

Rules of Organization and Procedure of the Board: Conforming changes to reflect the adoption of amendments to Pa.R.D.E. 203(b), 207(b), 208(b) and 218(c). Effective 2-21-04.

Pa.R.D.E. 208(f) and 214(d): Amendments to require that 1) the secretary of the board be served with a copy of any **petition to dissolve** or amend an **order of temporary suspension**; 2) the time period to hold the hearing runs from service of the petition on the secretary; and 3) the time periods set forth in the amended rules are calculated based on business days. Adopted 3-5-04, effective 3-20-04.

Pa.R.D.E. 102(a), 205(c), 206(a) – (c), 213(d) and 218(c): Amendments to change the organization of **hearing committees** by classifying members by their experience and ranking them

as senior, experienced or new members. Only senior or experienced members are permitted to perform certain functions under the rules. Adopted 9-9-04, effective 9-25-04.

Rules of Organization and Procedure of the Board: Conforming changes to reflect the adoption of amendments to Pa.R.D.E. 208(f)(4), 214(d)(4), 201 and 216. Effective 9-11-04.

Pa.R.D.E. 213: Amended to provide a procedure to seek review of a hearing committee member's determination on the **validity of a subpoena** and to establish time periods in which to do so. Adopted 11-22-04, effective 12-11-04.

"Ethics 2000" Changes to the Rules of Professional Conduct: These changes derived from recommendations from the American Bar Association, some of which were influenced by Pennsylvania's experience. The new rules preserve some existing rules specific to Pennsylvania experience and culture or that require conformity with existing statutes, thus achieving an appropriate balance between state and national practices. Adopted 8-23-04, effective 1-1-05.

Several proposed amendments were published for comment in 2004 as follows:

Rule of Professional Conduct 1.15 relating to **safekeeping of property**.

Pa.R.D.E. relating to **confidentiality of disciplinary proceedings**.

Pa.R.D.E. relating to **foreign legal consultants**.

Pa.R.D.E. 215 relating to **discipline on consent**.

Pa.R.D.E. relating to **organization of hearing committees**.

New Rule Pa.R.P.C. 1.18 to clarify that a lawyer who consults with a **prospective client** must treat the information learned during the consultation as confidential information that may not be revealed, except as allowed under

the exceptions to a lawyer's duty of confidentiality.

Pa.R.D.E. 102, 201, 203, 204, 212, 216, 217, 219 and 512 and Pa.R.P.C. 5.5 amendments to conform with Pennsylvania Bar Admission Rules changes providing for the **limited admission** of in-house corporate counsel and military attorneys and relating to foreign legal consultants.

Finance & Pension Committee

Effective January 1, 2004, the Disciplinary Board staff joined the Pennsylvania judiciary's medical benefits plan. Although the judiciary's medical benefits were similar to those offered to employees of the Disciplinary Board, the main reason behind the board's request to join the Court's plan was to better control the rising costs of medical insurance through a larger group size. Although the Disciplinary Board is self-funded through attorneys' annual fees, the relatively small size of the staff and the geographic locations of the offices limited the board's options with medical providers, as evidenced by the 23 percent increase in medical insurance premiums July 1, 2003. Since joining the judiciary's plan, the board has neutralized any additional increases in medical insurance costs through employee contributions and has reimbursed the Administrative Office of Pennsylvania Courts for the board's insurance costs.

The Finance and Pension Committee also analyzed the costs associated with hiring a full-time court reporter to service the Districts I and II offices. The committee found that the cost of providing salary and benefits for this employee would be higher than the expenses the board currently pays the court reporting firm used to attend and transcribe the notes of testimony for the hearings held in those two offices.

The committee studied the possibility of assessing an annual fee for inactive attorneys as a way of generating more revenues to offset the board's increased expenses. It reviewed a survey compiled by the New Jersey Office of

Attorney Ethics, which reported that 37 jurisdictions in the United States charge inactive fees. The committee also examined rules from three other jurisdictions with a comparable number of licensed attorneys. Two of those jurisdictions suspend attorneys who fail to pay their fees. The committee thus recommended to the board that an annual fee be imposed on inactive attorneys, that retired attorneys be exempt from paying inactive fees and that the enforcement rules be amended to provide that failure to pay either the active or inactive fees would result in the attorney being suspended from the practice of law.

Education Committee

The Education Committee prepared and presented the training session/refresher course for hearing committee members, held September 24, 2004, in Hershey. One hundred forty members attended.

The committee also designed the program for the board’s retreat meeting in July 2004. The topics were Professional Liability Insurance and Discipline on Consent.

Guest speaker Ellyn Rosen, Associate Regulation Counsel with the American Bar Association Center for Professional Responsibility, discussed discipline on consent. She provided the board with the results of a poll conducted by the Michigan Attorney Discipline Board on which jurisdictions had provisions for discipline on consent. Of the 27 respondents, Pennsylvania was the only one which limited discipline on consent to disbarments. As a result, the board has developed and recommended to the

2004 Executive Session Results	
Action	Total
Adjudications involving formal charges	69
Board referrals to Supreme Court, including report and recommendation for public discipline	44
Oral arguments before three-member panels of board members	11
Hearing before one board member on petition to dissolve temporary suspension	1
Hearing before one board member on petition to revoke suspension	1
Considerations by three-member panels of recommendations for summary private reprimands	19
Appeals by Office of Disciplinary Counsel from Review Hearing Committee members before three-member panels	2
Respondents appearing before board or three-member panels to receive private reprimands	39
Approval of filing petitions with the Supreme Court for emergency temporary suspensions	2
Petitions for reinstatement to active status of attorneys inactive more than three years with no discipline involved	60

Table 3.8.2

Court proposed rules to establish a procedure for discipline on consent.

Communications Committee

In January the board hired the consulting firm Hershey Philbin Associates (HPA) to help educate both the public and attorneys about the disciplinary board and the board’s role in ensuring the integrity of professional legal services in Pennsylvania. Among the company’s endeavors were improvements to the board’s Web site, including a redesign of the on-line consumer brochure; development of an e-newsletter to educate and inform attorneys on various aspects of the Rules of Professional

Conduct; an analysis of Pennsylvania's disciplinary system versus those of other comparable jurisdictions; and improved communications with each county bar association.

In August the Office of Disciplinary Counsel presented an ethics school continuing legal education satellite program in Pittsburgh. Two one-hour courses were offered, "Overview of the Pennsylvania Disciplinary System" and "Myths and Safekeeping Client Property and Trust Accounts." Although the board is unable at this time to present these types of courses on a regular basis due to the additional costs and staff time it would require, efforts are being made to incorporate these two subjects into existing CLE programs.

In 2004 Communications Committee Chair Robert C. Saidis, Esq. was assigned the task of reviewing written requests from attorneys who ask that their address information, either in writing or via the board's Web site, not be published. Of the 70 requests received, Mr. Saidis recommended that 53 be granted and 17 be denied for lack of good cause.

Hearing Committees

Because of amendments adopted by the Supreme Court, the hearing committees were restructured in October 2004. The amendments eliminated the numbered committees, such as Hearing Committee 1.01 or 1.02, and instead empowered the board to assign formal hearings to committees within a disciplinary district, using all available committee members.

Members are now ranked based on experience. Senior members are those who have completed one full three-year term and who have conducted at least three hearings that required the preparation of transcripts and full reports to the board. Experienced members are those who have completed at least one full year of service and who have conducted at least one hearing that required preparation of transcripts and a full report to the board. New members

are those who are either still in their first year of service and/or have not yet had a full hearing.

The new rules governing the appointment of three-member committees to hear cases require that a committee be composed of at least one senior member and one senior or experienced member. The board designates a senior member to chair the committee. Only a senior or experienced member may conduct the mandatory prehearing conference.

Changes have also been made to the procedures for scheduling hearings. At the time the three committee members are selected, prehearing and hearing dates are set and notices of prehearing and hearing are sent to the parties and the committee. This has eliminated the undue delays in scheduling that the board has experienced in the past.

As of December 31, 2004, nine senior members, 67 experienced members and 40 new members appointed by the Disciplinary Board were serving on a *pro bono* basis to conduct hearings.

National Council of Lawyer Disciplinary Boards

In February 2004 then Board Member and now Vice Chair Marvin J. Rudnitsky and Secretary of the Board Elaine Bixler attended the first meeting of the National Council of Lawyer Disciplinary Boards (NCLDB) in San Antonio, Texas. Mr. Rudnitsky was a presenter on the panel discussing recruiting, training and supporting the volunteer board and hearing committee members. Ms. Bixler was elected to the board of directors of the NCLDB.

Miscellaneous

In March 2004 the board began a search for an administrative staff person to assist in the day-to-day management of the office of the

secretary. Initially, the position was to be titled the deputy director of administrative affairs. Upon consultation with the Court, however, the job description was revised to create the position of executive director.

Joseph W. Farrell was hired November 8, 2004. As executive director he is responsible for all administrative functions, including attorney registration functions, personnel adminis-

tration, budgeting and managing other financial matters. He has extensive management experience, having served as Deputy Executive Director of Administration and Enforcement for the Pennsylvania Public Utility Commission and manager of the Executive Office for Customer Advocacy at First Energy since 1998.

Elaine Bixler remains as Secretary of the Board. AOPC

Table 3.8.3

Table 3.8.3, cont'd.