

**Disciplinary  
Board  
of the  
Supreme  
Court**

**2001 Membership:**

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Lisa A. Watkins, 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 2001, 54,063 active attorneys were registered in Pennsylvania, an increase of 0.46% over 2000.

During 2001, 4,738 complaints were filed with the Disciplinary Board, an average of 394 per month and an increase of 3.86% from last year.

Of the 4,738 new complaints received plus 801 complaints active at the start of the year, 4,727, or 85.34%, were disposed of, including 3,348 dismissed as lacking substance. At the start of 2001, 812 active complaints remained.

## Increase in Annual Fee

With the increase of the annual attorney assessment in 1991 from \$75.00 to \$105.00, the Disciplinary Board was able to establish funds for computerization, leasehold improvements and education. Conservative, prudent investing has enabled the board to hold this assessment steady.

In the ten years since the last increase, however, the board's staff has increased from 60 full- and part-time employees to 80 full- and part-time employees. More employees has necessitated larger office space for the four district offices as well as the offices of the secretary and chief disciplinary counsel.

With these increasing costs, therefore, in April 2001 the board recommended to the Supreme Court that the annual assessment be increased to \$155.00 for fiscal year 2001-02. After due consideration, by order dated May 15, 2001, the Supreme Court directed that the annual assessment be increased to \$130.00. By that same order, the mailing date for the annual fee forms was advanced to June 18, 2001, and the due date for payment of the annual fees was extended to August 6, 2001.

In the fall of 2001, the board requested that its auditors prepare an updated three-year forecast based on the increased fee. The draft forecast was approved by the full board in February 2002. Statistics show that the annual fees represent 92% of Disciplinary Board revenues. Since 1996, however, the average increase in the number of newly registered attorneys has dropped. (Between 1988 and 1993, the number of active attorneys in Pennsylvania increased 51.10%. Since 1993, the number has increased only 6.73%.) If investment income is used to calculate revenues, the forecast indicates that income will exceed expenses until the year 2004. If investment income is not used to determine revenues, however, expenses will exceed revenues starting in year 2001-2002.

## 2001 Activities

The board met six times in 2001. The results of the executive sessions can be found in Table 3.8.1 on page 66. 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 68. Comparisons of cumulative actions taken and actions taken in 2001 can be found in Chart 3.8.3 on page 70.

### *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:

**D.B.R.P. 85.10:** Would provide 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.

**Pa.R.D.E. 402:** Would permit the chief disciplinary counsel to independently contact qualified mental health agencies or programs dealing with **alcoholism or substance abuse** to request that the agency or program contact the respondent-attorney.

**D.B.R.P. 89.71:** Would require the scheduling in all cases of a **prehearing conference** to be held not less than 30 days before a hearing.

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

**Pa.R.D.E. 217(j):** Establishes specific law-related activities a **formerly admitted attorney** may engage in under the supervision of a member in good standing of the bar of this Commonwealth. Adopted December 23, 2000, for persons becoming formerly admitted

attorneys and January 1, 2001, for those who were formerly admitted attorneys on or before December 23, 2000.

**Pa.R.D.E. 218(f)(2):** Provides that an **attorney suspended** for a term not exceeding one year will be required to file a petition for reinstatement if he/she has been on inactive status for more than three years or if the order of suspension has been in effect for more than three years. Effective April 21, 2001.

**D.B.R.P. 85.13:** Provides that every pleading or response to a letter requesting statement of position submitted by or on behalf of a respondent-attorney in any proceeding that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a **verified statement** signed by the respondent-attorney. Amended effective July 14, 2001.

**D.B.R.P. 89.164, 89.273-89.275 and §93.53:** Amended to change or clarify the **procedures** for filing and service of briefs before hearing committees, procedures for reinstatement and dockets. Effective July 14, 2001.

**D.B.R.P. 91.100:** Conforming changes to reflect new Pa.R.D.E. 217(j) provisions relating to law-related activities that may be conducted by **formerly admitted attorneys**, which were amended by the Court by order dated December 7, 2000. Effective July 14, 2001.

### *Finance & Pension Committee*

At its meeting on May 11, 2000, the board reviewed reports submitted by two outside consultants concerning the board's investment portfolio as well as observations and recommendations concerning the board's investments, which were being handled through PNC Advisors. At that time the investment moneys were held in Black Rock funds almost exclusively, and the performance reports indicated that Black Rock provided relatively inconsistent returns. Based on these

recommendations, the board decided to obtain proposals from other investment firms with the goal of using three different firms for investments.

At its meeting on April 17, 2001, the board changed its investment policy to provide that its assets will be divided equally between three investment firms for the purpose of evaluating net return based on the board's conservative investment policy. Instruction will be provided to the three firms concerning asset allocation. Revenues generated by the Attorney's Annual Fee will be deposited equally between the three firms. Likewise, monthly operating expenses will be withdrawn equally from each. Each firm is required to file quarterly reports and to provide, as necessary, investment advice. After a period of one year, the three firms' investment strategies and fund performances will be reviewed and evaluated against their fees.

The Finance & Pension Committee reviewed proposals submitted from Bruce A. Kraig Associates and Henry H. Armstrong Associates, Inc. and recommended that these two investment firms be retained to invest the board's funds, along with PNC Advisors.

The committee also met to review and approve the budget for fiscal year 2001-02, monitored the monthly financial reports prepared by the office of the secretary, and made recommendations to the board concerning

2001 Executive Session Results	
Action	Total
Adjudications involving formal charges	53
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.]	26
Respondents appearing before board to receive private reprimands	26
Oral arguments before three-member panels of board members	7
Hearing on a petition to dissolve a temporary suspension (before one board member)	2
Three-member panel hearing on appropriate action after a finding of contempt by Supreme Court	1
Board referrals to Supreme Court, including report and recommendation for public discipline	32
Supreme Court orders for disbarment on consent (resulting from verified statements submitted by respondents)	20
Supreme Court orders reinstating previously disbarred or suspended attorneys*	10*
Disbarred attorneys reinstated	1
Supreme Court denials for reinstatement	3+
Petitions for reinstatement to active status to attorneys inactive more than three years with no discipline involved	44
*Action taken following hearing on petition for reinstatement +One after having been suspended, one after having been disbarred and one after having been on inactive status three years or more	

Table 3.8.1

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 on July 25, 2001. Eighteen of the 22 new members attended.

The committee also designed the program for the board's retreat meeting in the fall of 2001. The topic was "Open Discussion on Closed Records" and dealt with the dissemination of redacted Disciplinary Board reports and opinions in both public and private discipline cases.

### *Bridge-the-Gap Committee*

The concept of a Bridge-the-Gap program originated from a Disciplinary Board retreat meeting held in October 1994, where one of the topics for discussion was "Preceptorship-Mentoring Program vs. Practical Business Course." Following a lengthy debate, the board concluded that a practical business course for newly admitted attorneys in their first year of practice would be beneficial and referred the issue to the Education Committee to draft a proposal to the Supreme Court. The Court, upon learning of the idea, responded enthusiastically.

Over the next several years, the Education Committee researched the concept of a bridge-the-gap course thoroughly, obtaining information from other states concerning their mandatory courses, meeting with representatives of the Continuing Legal Education Board and the Board of Law Examiners, and writing to accredited continuing legal education providers to give them an opportunity to submit proposals for offering the course.

In January 1999 a Bridge-the-Gap Committee was established and in the spring of 2001, the program was offered for the first time at Temple Law School, Dickinson Law School, the University of Pittsburgh Law School and Widener Law School in Harrisburg.

Originally established as a pre-admission requirement, the Supreme Court has mandated that the program become a part of the post-admission process, administered by the Continuing Legal Education Board. As a result of this change, the Disciplinary Board anticipates that it will no longer be co-funding the program and accordingly, has dropped this line item from the Budget for 2001-2002.

### *Hearing Committees*

As of December 31, 2001, 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*

Effective October 2001 the Disciplinary Board's unpublished reports and opinions are now available on the Web site of the Unified Judicial System. The address is [www.courts.state.pa.us/Index/Opinions/IndexOpinions.asp](http://www.courts.state.pa.us/Index/Opinions/IndexOpinions.asp).

For the last several years, the board has wrestled with the problem of the District & County Reports not publishing board reports and opinions, thus depriving Hearing Committee members, respondents and respondents' counsel the opportunity to review recent board decisions. (Only the published reports can be found on Westlaw.) The reaction to these postings has been extremely favorable.

### **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**