

2005 Membership:

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

Staff:

Joseph W. Farrell, *Executive Director*

- * Term as chair expired 4-1-05
- ** Appointed chair 4-1-05
- + Appointed vice chair 4-1-05
- ++ Resigned 9-23-05
- # Appointed 9-23-05

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

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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).)

2005 Statistics	
Attorneys	56,907
Change from 2004	2.86%
Complaints filed with board	4,716
Change from 2004	(3.58)%
Pending at start of 2005	1,007
Complaints disposed of	4,887
Total complaints resulting in discipline	347
Total pending at end of 2005	1,024

Table 3.8.1

2005 Activities

Statistics for 2005 can be found in Table 3.8.1 above.

The board met seven times in 2005. The results of the executive sessions can be found in Table 3.8.2 on page 60. 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 63.

Comparisons of cumulative actions taken and actions taken in 2005 can be found in Chart 3.8.4 on page 65.

Rules Committee

The following rules changes were approved by either the board or the Supreme Court or became effective in 2005:

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 recent Pennsylvania Bar Admission Rule changes providing for the **limited admission of in-house corporate counsel and military attorneys** plus amendments relating to **foreign legal consultants**. Adopted 3-17-05, effected 9-1-05.

Pa.R.D.E. 209: Provides that **complaints against board members** be handled in the same manner as other complaints, with the exception that if action is required by the board, the Supreme Court will create an ad hoc disciplinary board comprised of five former board members to handle such action. Adopted 4-1-05, effective 4-16-05.

Pa.R.D.E. 221 and R.P.C. 1.15: Creates new standards of conduct governing the **handling of property of others** by lawyers. Adopted 4-5-05, effective 4-23-05.

Pa.R.D.E. 215: Provides for the **imposition of discipline** other than disbarment upon consent. Adopted 5-24-05, effective 6-11-05.

Pa.R.D.E. 219: Permits the chief justice to delegate the **signing of orders** transferring attorneys to inactive status to the prothonotary of the Court. Adopted 10-13-05, effective 10-29-05.

Pa.R.D.E. 104, 208, 209, 213, 215 and 402: Opens all **disciplinary proceedings** to the public after the filing of an answer to a petition for discipline or the time to file an answer has expired without an answer being filed.

Reinstatement proceedings are open after the filing and service of a petition for reinstatement. Adopted 10-26-05, effective 11-12-05.

Pa.R.D.E. 208(h): Establishes a procedure for the board to handle **violations of probation** in cases where the probation was ordered by the board. Adopted 11-9-05, effective 11-26-05.

R.P.C. 1.4: Requires lawyers who do not have **professional liability insurance** of at least \$100,000 per occurrence and \$300,000 in the aggregate per year to inform new clients in writing of such and to inform existing clients in writing at any time the lawyer's insurance drops below either of those amounts or if the insurance is terminated. Amended 12-30-05, effective 7-1-06.

Rules of Organization and Procedure of the Board: Conforming changes to reflect the adoption of amendments to Pa.R.D.E. 102, 205(c), 206, 213 and 218(c). Amended by the board 3-12-05.

Rules of Organization and Procedure of the Board: Changes to reflect the adoption of amendments to Pa.R.D.E. 102, 201, 203, 204, 209, 212, 215, 216, 217, 219 and 221. Amended by the board 8-6-05.

Several proposed amendments were published for comment in 2005 as follows:

Pa.R.D.E. 215: Discipline on Consent (no comments received).

R.P.C. 1.4: Disclosure of Professional Liability Insurance (42 comments received).

Rules of Disciplinary Enforcement and the Rules of the Board: Taxation of expenses to be paid by respondent attorneys (no comments received).

Board's Rules of Organization and Procedure: The procedure for **challenging subpoenas** (no comments received).

Pennsylvania Bar Admission Rules and the Rules of Disciplinary Enforcement: Misstatements or Omissions in Licensure Applications (no comments received).

Finance & Pension Committee

In 2005 the Finance & Pension Committee established a two-tiered late payment penalty of \$100 at the time final notices are mailed to attorneys, which will increase to \$200 at the time the list of delinquent attorneys is forwarded to the Supreme Court. The committee also established the returned check fee at \$50.

Effective January 1, 2004, the Disciplinary Board staff joined the Pennsylvania Judiciary's medical benefits plan. Since this time the board has neutralized any additional increases in medical insurance costs through employee co-payments and has reimbursed the Administrative Office of Pennsylvania Courts for the board's insurance costs.

Education Committee

The Education Committee designed the program for the board's retreat meeting in July 2005. The topics covered were conservatorships and probation.

Conservatorship discussion centered on ways to cover the rising costs of conservatorships and whether the Office of Disciplinary Counsel should handle them in-house.

Guest speaker Mark Flaherty, a co-chair of the Pennsylvania Bar Association's Lawyers Assistance Committee, which provides the sobriety monitors the board uses when substance abuse probation is ordered, discussed probation. The board reviewed the history of probation and how it is currently being used. It was decided that the sobriety monitoring program is working extremely well, and no changes to the procedures are needed.

Concerns were raised regarding the use of practice probation. No training ground exists for practice monitors, and since no pool of ready volunteers for this type of monitoring is available, the respondent-attorney is required to select his or her own monitor. Although practice monitors are required to file quarterly reports, the board must rely on the honesty and impartiality of the monitor filing the report. As a result of such concerns, a high level task force was appointed to review this issue and other options.

The Education Committee also redesigned the program at the training session for new hearing committee members held on September 13, 2005, in Hershey. A number of panels discussed topics such as the Braun Standard, Other Aggravating & Mitigating Factors and How to Determine the Appropriate Discipline.

2005 Executive Session Results	
Action	Total
Adjudications involving formal charges	92
Board referrals to Supreme Court, including report and recommendation for public discipline	68
Oral arguments before three-member panels of board members	19
Hearing before one board member on petition to revoke or modify probation	2
Considerations by three-member panels of recommendations for summary private reprimands	11
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	30
Approval of filing petitions with the Supreme Court for emergency temporary suspensions	1
Petitions for reinstatement to active status of attorneys inactive more than three years with no discipline involved	53

Table 3.8.2

Communications Committee

In early 2005 a new consumer brochure was created to explain the responsibilities of attorney and the function of the Disciplinary Board. It was translated into Spanish and braille and has been distributed to the Pennsylvania Bar Association and all county bar associations, public libraries and courthouses throughout the Commonwealth. The English and Spanish versions are also available on the Disciplinary Board's Web site.

The first Attorney E-Newsletter was sent out on April 18, 2005, to 16,000 attorneys who provided e-mail addresses when they submitted their annual fee forms. This newsletter is

intended to inform and educate members of the legal profession regarding activities and initiatives of the Disciplinary Board. Articles focus on changes in the Rules of Professional Conduct, activities of the board, ethics education and advice from members of the staff and board. As of December 2005, the number of subscribers had increased to 21,501. The board continues to receive positive feedback from those who receive this newsletter.

Hearings and Hearing Committees

Hearing committee members are ranked based on their 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.

A committee must be composed of at least one senior member and one senior or experienced member. A senior member chairs the committee. Only a senior or experienced member may conduct the mandatory prehearing conference.

As of December 31, 2005, 83 senior members, 69 experienced members and 47 new members appointed by the Disciplinary Board were serving on a *pro bono* basis to conduct hearings.

One of the goals of board chair Marvin J. Rudnitsky was to better communicate with and provide more support to the Hearing Committee members. To that end, in August 2005 the board launched a Web site exclusively for current members. This site offers sample hearing committee reports, orders and other documents; Word templates for the preparation of committee reports, travel expense forms and forms to use to transmit their reports. Members are able to look up address information for other members and verify their own information. A research section offers selected board reports and Supreme Court opinions from recent cases of interest.

The board has also established a Hearing Committee e-newsletter which is e-mailed to members quarterly. The first issue was published in August 2005.

Disciplinary Board Web Site

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 addition, the board, with the assistance of the consulting firm Hershey Philbin Associates, redesigned the consumer pages of its Web site and in September 2005 began making changes to the attorney pages. This redesign is being done in an effort to make the site more user-friendly. It is anticipated that these changes will be ready to launch in the spring of 2006.

Public Access

Following a two-year study, effective November 12, 2005, the Supreme Court approved opening proceedings and hearings to the public after an answer is filed to a petition for discipline or the time to file an answer has passed. Pennsylvania has thus joined 41 other jurisdictions in the United States who allow public access to proceedings.

As a result of this historic change, a number of new procedures are being implemented by the board. For example, the board's case tracking software has been integrated with the attorney registration software to allow the posting of public proceedings on an individual attorney's registration record. The internal Web access used by the Unified Judicial System and the board's public Web site have been updated to post this information when proceedings become public.

Miscellaneous

In July 2005 the board established a procedure for three-member panels to review Joint Petitions for Discipline on Consent, as a result of the Court's approval of amendments to Pa.R.D.E. 215.

Pennsylvania broke historic ground by requiring lawyers to provide written disclosure to clients if they do not carry professional liability insurance in the minimum amounts set forth in new Rule of Professional Conduct 1.4(c).

Only four other jurisdictions -- Alaska, New Hampshire, Ohio and South Dakota -- have this requirement. Eleven other jurisdictions have adopted some form of the ABA Model Rule on Insurance Disclosure.

As a result of the problems relating to the use of practice monitors discussed at the board's retreat meeting, a task force was appointed and began meeting to explore possible ways to resolve this issue.

During 2005 the executive director and chief disciplinary counsel began collection efforts on the estimated \$200,000 in outstanding costs owed by attorneys who were disciplined or were granted or denied reinstatement. One hundred sixty collection letters were mailed to attorneys, 15 of which were returned as undeliverable, and 69 attorneys were offered a payment plan but failed to respond in any way. Since these efforts began, \$29,560 in outstanding costs have been recovered. Collection efforts are ongoing.

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