

**DISCIPLINARY REVIEW BOARD
OF THE
SUPREME COURT OF NEW JERSEY**



**ANNUAL REPORT
2018**

**Ellen A. Brodsky
Chief Counsel
Disciplinary Review Board**

DISCIPLINARY REVIEW BOARD
OF THE
SUPREME COURT OF NEW JERSEY

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June 19, 2019

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey:

I am pleased to submit to the Court the 2018 Annual Report of the Disciplinary Review Board. The Board concluded all matters pending from 2017. In 2018, the Board resolved 451 matters and transmitted to the Court 137 decisions in disciplinary cases.

In calendar year 2018, the Office of Board Counsel increased the number of decisions on the Board's section of the Judiciary's website (njcourts.com). Included on the website are recent decisions, as well as a full, searchable archive back to 1988. The Board's decisions for the past thirty years are now included, completing our decisions archive. Recent decisions will continue to be uploaded.

In April 2018, Regina Waynes Joseph, Esq., was appointed to serve on the Board. Ms. Joseph's biographical information is included in this report. Ms. Joseph was appointed following the expiration of the term of Vice-Chair Edna Y. Baugh, Esq. Ms. Baugh served with distinction on the Board for twelve years. Finally, effective December 31, 2018, Deputy Chief Counsel Paula T. Granuzzo, who served in the attorney disciplinary system for approximately thirty years, retired.

In addition, in 2018, the Office of Board Counsel collected \$330,624 in disciplinary costs assessed against attorneys.

Chief Justice and Associate Justices
DRB 2018 Annual Report
June 19, 2019
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As in 2018, the Board will continue to fairly and expeditiously resolve all cases before it, fulfilling its mission within the disciplinary system, as established and directed by the Court.

Respectfully submitted,

A handwritten signature in black ink that reads "Ellen A. Brodsky". The signature is written in a cursive style with a large initial "E".

Ellen A. Brodsky
Chief Counsel

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INTRODUCTION

The Disciplinary Review Board of the Supreme Court of New Jersey (Board) serves as the intermediate appellate level of the attorney disciplinary system in this state.

The district ethics committees investigate, prosecute, and recommend discipline in most disciplinary matters. The Office of Attorney Ethics (OAE) oversees the districts and exercises statewide jurisdiction over complex and emergent matters. In some cases, the Supreme Court appoints special masters to hear disciplinary matters. The Board reviews all recommendations for discipline from the districts and from special masters. The Board's decisions as to discipline are final in all cases, subject to the Supreme Court's confirming order, except those decisions recommending disbarment. In contrast, the Board's determinations of appeals from dismissals of ethics grievances and of appeals from Fee Arbitration Committee rulings are final, with no judicial recourse.

The Supreme Court created the Board in 1978 and the Office of Disciplinary Review Board Counsel (Office of Board Counsel) in 1984. In mid-1994, the Supreme Court eliminated all private discipline and opened to the public all disciplinary proceedings after the filing and service of a formal complaint.

As part of the disciplinary system, the Board is funded exclusively by annual assessments paid by all New Jersey attorneys. In 2018, New Jersey attorneys admitted in their fifth to forty-ninth year of practice were assessed a total of \$212 to fund the disciplinary system. Attorneys in their third and

fourth years of practice were assessed a total of \$183. Attorneys in their second year of admission were assessed \$35. Attorneys in their first year of admittance and attorneys practicing fifty or more years are not charged a fee.

All Board members are volunteers; however, its staff is professional. The 2018 budget for the disciplinary system, as approved by the Supreme Court, allocated \$2,282,254 to cover salaries and benefits for Office of Board Counsel employees and an additional \$248,325 to cover the Board's operating costs.

BOARD FUNCTIONS

The Board's review is *de novo* on the record, with oral argument at the Board's discretion. The Board hears oral argument on all cases in which a district ethics committee¹ or a special master issues a report recommending discipline greater than an admonition. At the conclusion of oral argument, the Board privately deliberates about the appropriate outcome of each case, voting for either dismissal of the complaint or for the imposition of one of several forms of discipline: admonition, reprimand, censure, suspension, and disbarment. Occasionally, the Board will remand a matter for further proceedings. Office of Board Counsel then prepares a formal decision for the Board's review. Upon the Board's approval, the decision is filed with the Supreme Court.

In addition to discipline, the Board may impose certain conditions or restrictions, such as, proctorship, course requirements, proof of fitness certified by a mental health practitioner, periodic submissions of trust account reconciliations, annual audits of trust account records, return of unearned fees, and the requirement that the attorney practice in a law firm setting or continue psychological/substance abuse therapy. In some instances, the Board may require community service.

In matters where the Board recommends disbarment, the Supreme Court automatically schedules oral argument before it. In all other instances, the Board's determination that discipline is warranted is deemed final, subject to

¹ References to district ethics committees include the Committee on Attorney Advertising (R. 1:19A-1 et seq.), which considers "all ethics grievances alleging unethical conduct with respect to advertisements and other related communications" R. 1:19A-4(a).

the attorney's or the OAE's right to file a petition for review. Occasionally, the Supreme Court, on its own motion, schedules oral argument in non-disbarment cases.

When a district ethics committee recommends an admonition, the Board reviews the matter on the written record, without oral argument. If an admonition is appropriate, the Board issues a letter of admonition without Supreme Court review. Alternatively, the Board may schedule the matter for oral argument, if it appears that greater discipline is warranted, or may dismiss the complaint. R. 1:20-15(f)(3) allows the Board to issue a letter of admonition, without Supreme Court review, in those cases where a district ethics committee or a special master recommends a reprimand, but the Board determines that an admonition is the more appropriate form of discipline.

When an attorney has been convicted of a crime, or has been disciplined in another jurisdiction, the OAE will file with the Board a Motion for Final Discipline (R. 1:20-13(c)) or a Motion for Reciprocal Discipline (R. 1:20-14), respectively. Following oral argument, receipt of briefs, and the Board's deliberation, the Office of Board Counsel prepares a formal decision for the Board's review and, after approval, the decision is filed with the Supreme Court. The same post-decision procedures governing cases heard by a district ethics committee or a special master apply.

Under R. 1:20-10, motions for discipline by consent are filed directly with the Board, without a hearing below. Discipline by consent is not plea bargaining, which is not permitted in disciplinary matters. In such motions, the parties stipulate the unethical conduct, the specific Rules of Professional

Conduct violated, and the level of discipline required by precedent. Following the Board's review of the motion on the written record, it may either grant the motion and file a letter-decision with the Supreme Court, or deny the motion and remand the case to the district ethics committee or to the OAE for appropriate action.

If an attorney fails to timely file a verified answer to a formal ethics complaint, the district ethics committee or the OAE certifies the record directly to the Board for the imposition of discipline. R. 1:20-4(f)(2). The Board treats the matter as a default. If the attorney files a motion to vacate the default, the Board will review the motion simultaneously with the default case. If the Board vacates the default, the matter is remanded to the district ethics committee or to the OAE for a hearing. Otherwise, the Board will proceed with the review of the case on a default basis, deeming the allegations of the complaint admitted. R. 1:20-4(f)(1). A formal decision is thereafter filed with the Supreme Court.

A disciplinary matter may also come to the Board in the form of a disciplinary stipulation. In these cases, the attorney and the ethics investigator jointly submit a statement of the attorney's conduct and a stipulation specifying the Rules of Professional Conduct that were violated. The Board may accept the stipulation and impose discipline by way of formal decision filed with the Supreme Court, or it may reject it and remand the matter either for a hearing or for other appropriate resolution.

In addition, the Board reviews cases, pursuant to R. 1:20-6(c), in which the pleadings do not raise genuine disputes of material fact, the respondent does not request to be heard in mitigation, and the presenter does not request

to be heard in aggravation. In those cases, the Board reviews the pleadings and a statement of procedural history in determining the appropriate sanction to be imposed.

The Board also reviews direct appeals from grievants who claim that a district ethics committee improperly dismissed their grievance after an investigation, or improperly dismissed their complaint after a hearing, and from parties (both clients and attorneys) to fee arbitration proceedings who contend that at least one of the four grounds for appeal set out in R. 1:20A-3(c) exists.

Further, the Board reviews Petitions for Reinstatements, filed pursuant to R. 1:20-21, by attorneys who have been suspended from the practice of law by the Supreme Court. Typically, the Board considers these petitions without the necessity of oral argument, and issues a recommendation to the Supreme Court in respect of whether the attorney should be permitted to return to the practice of law.

Finally, the Board also reviews, pursuant to R. 1:20-9, requests for the release of confidential documents in connection with a disciplinary matter, and requests for protective orders to prohibit the release of specific information. Additionally, the Board considers Motions for Temporary Suspension filed by the OAE, in accordance with R. 1:20-15(k), following an attorney's failure to comply with a fee arbitration determination or a stipulation of settlement. In those cases, the Board recommends to the Supreme Court whether the attorney should be temporarily suspended until the fee and any monetary sanction imposed are satisfied.

BOARD MEMBERSHIP

The Board comprises nine members appointed by the Supreme Court who serve without compensation for a maximum of twelve years (four three-year appointments). Three appointees are non-lawyer, public members; one member is customarily a retired judge of the Appellate Division or of the Superior Court; the remaining five members are attorneys. In 2018, the Board was chaired by Bonnie C. Frost, Esq., and Bruce W. Clark, Esq., was Vice-Chair.

The Board's members in 2018 were:

Chair, Bonnie C. Frost, Esq.

Ms. Frost, of Bernardsville, is a member of the firm of Einhorn, Harris, Ascher, Barbarito & Frost, P.C. She was admitted to the New Jersey Bar in 1984 and was appointed to the Board in 2006 after serving on the Morris-Sussex Ethics Committee from 1991 to 2006 (as Secretary from 1993 to 2006). She is a Certified Matrimonial Law Attorney and the former Chair of the Family Law Section of the New Jersey State Bar Association, a former Second Vice-President of the New Jersey Chapter of the American Academy of Matrimonial Lawyers, a member of the Supreme Court Family Practice Committee, a member of the Supreme Court Committee for Standardization of Family Law, a member of the Supreme Court Special Committee on Ethics and Admissions, and a member and former Chair of the New Jersey State Bar Association Appellate Practices Committee. Ms. Frost received her B.A. from Douglass College, her M.Ed. and Ed.S. from Rutgers University, and her J.D. from Seton Hall University School of Law.

Vice-Chair, Bruce W. Clark, Esq.

Mr. Clark, of Hopewell, is a partner at Clark Michie, LLP in Princeton. Mr. Clark concentrates in corporate and complex civil litigation, including consumer class action and mass tort defense. He was a member of the District VII Ethics Committee and was appointed to the Board in April 2008. Mr. Clark is a graduate of the University of Virginia and the George Washington University National Law Center, where he served on the Law Review.

Peter J. Boyer, Esq.

Mr. Boyer, of Cherry Hill, is a partner in the firm of Hyland Levin LLP. He concentrates his practice on commercial and business litigation matters and pre litigation counseling with respect to commercial disputes. Mr. Boyer was appointed to the Board in 2015. He previously served as a member, Vice-Chair and Chair of the District IV Ethics Committee, and presently serves as a member of the American Law Institute and is active in the Business Torts and Unfair Competition Committee of the Section of Litigation of the American Bar Association. Mr. Boyer is a graduate of the University of Pennsylvania (B.A.) and the Georgetown University Law Center, where he served as an editor of the American Criminal Law Review.

Hon. Maurice J. Gallipoli

Judge Gallipoli, of Mountainside, was appointed to the Board in 2012 to fill the unexpired term of Judge Reginald Stanton and then to a full term in his own right thereafter. He served in the judiciary for 25 years from 1987 to 2012, when he reached the mandatory retirement age for Superior Court judges. He served as the Presiding Judge, Civil Part, Hudson County for many years and was the Assignment Judge for the Hudson vicinage for the last eight years of his judicial service. He is currently associated with the firm of Porzio, Bromberg & Newman, P.C., in Morristown in an "of counsel" capacity.

Thomas J. Hoberman, CPA

Thomas J. Hoberman, CPA/ABV/CFF, of Princeton, was appointed to the Board in November 2013. A graduate of the University of Maryland, Mr. Hoberman is a partner in the Business Valuation and Forensic Accounting Services Department at the accounting and consulting firm WithumSmith+Brown.

Regina Waynes Joseph, Esq.

Regina Waynes Joseph, of West Orange, is a solo practitioner at Regina Waynes Joseph Attorney At Law. A second career attorney, she was admitted to the New Jersey Bar in 1990. Her practice concentrates in labor and employment related litigation, corporate, not for profit, civil rights, and entertainment law. Ms. Joseph is also an Arbitrator for FINRA and other panels, Certified Federal Mediator, U.S. District Court of New Jersey and Civil Mediator, Superior Court of New Jersey. Ms. Joseph was appointed to the Board in 2018. She served as a member of the District VC Ethics Committee; member, Vice Chair and Chair of the District VC Fee Arbitration Committee; member of the Supreme Court Committee on Complementary Dispute Resolution; and member of the Supreme Court Committee on Minority Concerns. She is a past President of the Garden State Bar Association and previously served as a member of the

Board of Governors of the National Bar Association. Ms. Joseph received her B.A. from the College of Mount Saint Vincent, M.A. from Columbia University, and J.D. from Rutgers University School of Law – Newark.

Eileen Rivera

Eileen Rivera, of Belleville, was appointed to the Board in June 2014. A Rutgers-Newark graduate, she is a career social worker and is employed in the Juvenile Justice system. Prior to her appointment to the Board, Ms. Rivera was a member of the District VB Ethics Committee, for four years, serving as its designated public member.

Anne C. Singer, Esq.

Anne C. Singer, of Cherry Hill, is a solo practitioner at the Law Office of Anne C. Singer in Haddonfield. She was admitted to the New Jersey Bar in 1973, and was appointed to the Board in November 2013, after serving on the District IIIB Ethics Committee for several years. Her practice focuses on commercial litigation, federal criminal defense, and appeals. She served as an Assistant United States Attorney in the civil and criminal divisions of New Jersey's U.S. Attorney's Office from 1978 to 1990, clerked for Justice Robert L. Clifford of the New Jersey Supreme Court, is past Chair of the State Bar Association's Criminal Law Section, and is a member of the New Jersey Law Journal Editorial Board and of the New Jersey Supreme Court's Advisory Committee on Professional Ethics. Ms. Singer is a graduate of the University of Chicago (B.S.), University of Alabama (M.S.) and University of Cincinnati Law School, where she was editor-in chief of the law review.

Robert C. Zmirich

Robert C. Zmirich, of Mt. Laurel, was appointed to the Board in April 2009. A graduate, with honors, of the U.S. Naval Academy, he is President of Insurance Review Service, a diversified financial services and insurance firm. Prior to his appointment to the Board, Mr. Zmirich was a member of the District IIIB Ethics Committee, for four years, serving as its designated public member.

OFFICE OF BOARD COUNSEL

The Office of Board Counsel functions as a clerk's office (docketing, case processing, calendaring, distribution, and document storage), in-house counsel to the Board (providing legal research and legal advice to the Board), and a cost assessment and collection agency (assessing administrative and actual costs, collecting payments, and enforcing assessments by filing judgments and seeking temporary suspensions for non-payment).

In 2018, the Office of Board Counsel comprised eight attorneys (Chief Counsel, Deputy Chief Counsel, First Assistant Counsel, and five Assistant Counsel), one information technology analyst, one administrative supervisor, two administrative specialists, one court services officer, one technical assistant, and three secretaries.

Since 1991, the Office of Board Counsel has furnished pre-hearing memoranda to the Board in serious disciplinary cases, motions for consent to discipline greater than an admonition, and matters (such as defaults) containing novel legal or factual issues. To provide greater assistance to the Board's case review function, this policy was modified. In mid-2003, the Office of Board Counsel began supplying the Board with memoranda on all matters scheduled for consideration, except motions for temporary suspension. These in-depth memoranda set out the facts relevant to the issues raised, the applicable law, a pertinent analysis of both, and a recommendation of the appropriate level of discipline.

CASELOAD INFORMATION

The Board carried 138 matters into January 2018, seventeen fewer than it carried into 2017. See Figure 1. By December 31, 2018, all of those matters had been resolved. See Figure 2.

One hundred fifteen matters were pending on December 31, 2018: seventeen (14.8%) presentments; two (1.7%) stipulations; twenty-nine (25%) defaults; three (2.6%) admonitions; five (4.3%) motions for discipline by consent; seven (6%) motions for final discipline; nine (7.8%) motions for reciprocal discipline; thirty-nine fee and ethics appeals (33.9%); one petition for restoration, and three motions for temporary suspension (3.5%). See Figures 1 and 2. Figure 3 provides a graphic representation of the pending Board caseload at the close of 2018, compared to year-end pending caseloads for 2014 through 2017.

During calendar year 2018, the Office of Board Counsel docketed 428 matters for review by the Board, twenty-eight fewer than 2017. The number of ethics appeals decreased in 2018: sixty-six appeals were filed in 2018, while seventy-five were filed in 2017. The number of fee appeals filed in 2018 also decreased: eighty-seven fee appeals were docketed in 2018, compared to 108 fee appeals docketed in 2017. Admonition filings increased: eighteen were docketed in 2018, while eleven were docketed in 2017.

In all, the Board resolved 451 of the 566 matters carried into or docketed during calendar year 2018 – a disposition rate of 80%. Figure 4 compares the Board's disposition rates from 2014 to 2018.

With the March 1, 1995 rule changes, the Court set specific time frames for disposition of matters at all levels of the disciplinary system. At the appellate level, pursuant to R. 1:20-8(c), recommendations for discipline are to be resolved within six months of the docket date, while all ethics and fee arbitration appeals have a three-month resolution time goal. See Figure 5.

Both fee and ethics appeals processing times declined slightly in 2018. Disposition times for all other case types were significantly lower than the prior year and all were within the recommended timeframe of six months.

CASELOAD INFORMATION: FIGURE 1

| DRB ANNUAL ACTIVITY REPORT | | | | | |
|---|----------------|-----------------|--------------|-----------------|----------------|
| JANUARY 1, 2018 TO DECEMBER 31, 2018 | | | | | |
| Case Type | Carried | Docketed | Total | Disposed | Pending |
| Admonition/Presentment | 6 | 7 | 13 | 11 | 2 |
| Admonition | 3 | 18 | 21 | 19 | 2 |
| Appeal/Presentment | 0 | 1 | 1 | 1 | 0 |
| Consent to Admonition | 4 | 4 | 8 | 7 | 1 |
| Consent to Discipline | 7 | 30 | 37 | 32 | 5 |
| Consent to Disbarment/Costs | 0 | 18 | 18 | 18 | 0 |
| Default | 19 | 66 | 85 | 56 | 29 |
| Ethics Appeal | 28 | 66 | 94 | 78 | 16 |
| Fee Appeal | 22 | 87 | 109 | 86 | 23 |
| Motion for Final Discipline | 11 | 14 | 25 | 18 | 7 |
| Motion for Medical Examination | 0 | 2 | 2 | 2 | 0 |
| Motion for Reciprocal Discipline | 16 | 21 | 37 | 28 | 9 |
| Motion for Temporary Suspension | 3 | 24 | 27 | 24 | 3 |
| Miscellaneous | 1 | 12 | 13 | 13 | 0 |
| Petition for Restoration | 1 | 9 | 10 | 9 | 1 |
| Presentment | 13 | 35 | 48 | 33 | 15 |
| <u>R.</u> 1:20-6(c)(1) | 2 | 3 | 5 | 5 | 0 |
| Remand | 0 | 1 | 1 | 1 | 0 |
| Stipulation | 2 | 10 | 12 | 10 | 2 |
| Totals | 138 | 428 | 566 | 451 | 115 |

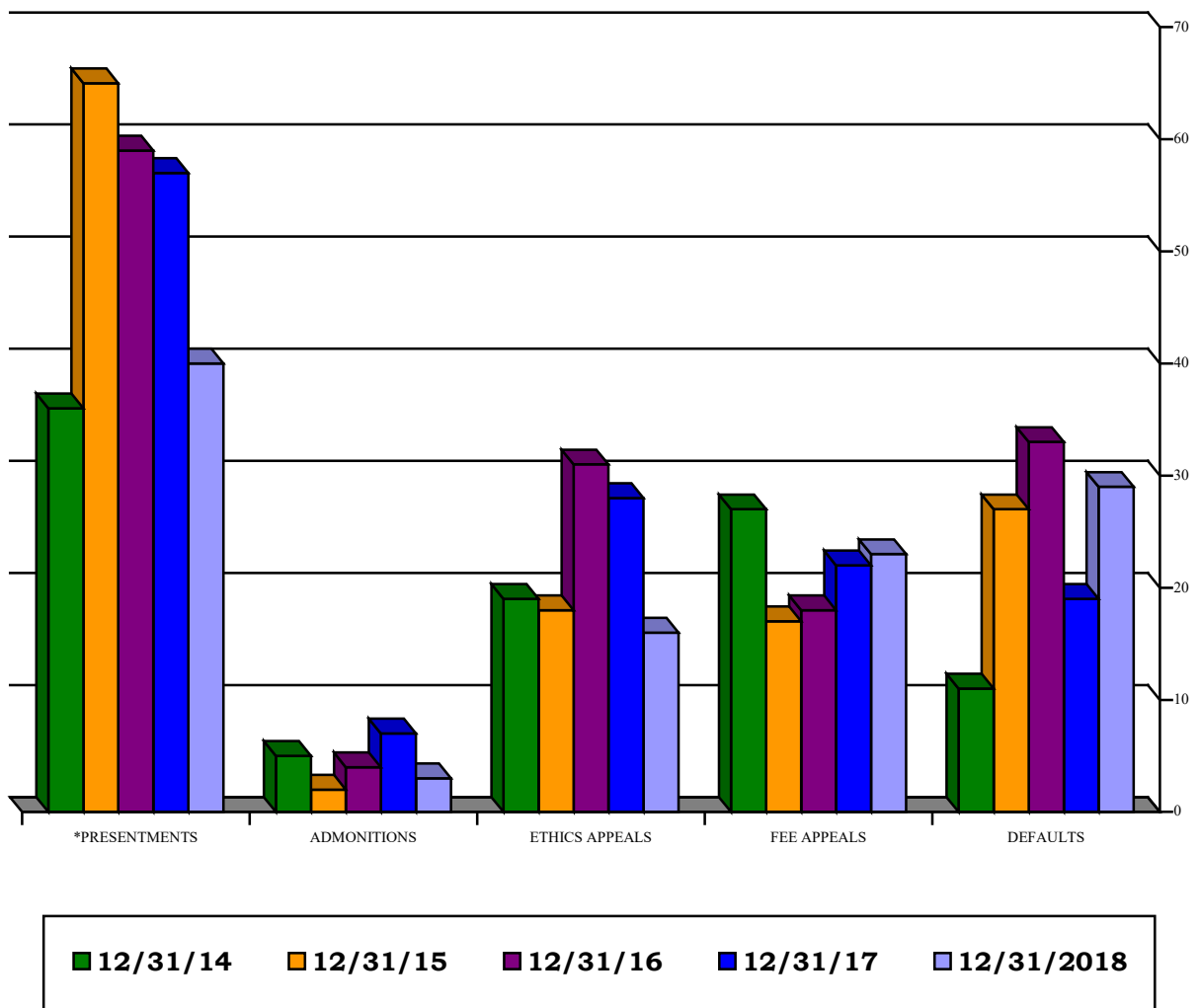
CASELOAD INFORMATION: FIGURE 2

| AGE OF PENDING CASES – BY CASE TYPE | | | | |
|--|-------------|-------------|--------------|----------------------|
| As of December 31, 2018 | | | | |
| Case Type | 2018 | 2017 | Prior | Total Pending |
| Admonition | 3 | 0 | 0 | 3 |
| Consent to Discipline | 5 | 0 | 0 | 5 |
| Default | 29 | 0 | 0 | 29 |
| Ethics Appeal | 16 | 0 | 0 | 16 |
| Fee Appeal | 23 | 0 | 0 | 23 |
| Motion for Final Discipline | 7 | 0 | 0 | 7 |
| Motion for Reciprocal Discipline | 9 | 0 | 0 | 9 |
| Motion for Temporary Suspension | 3 | 0 | 0 | 3 |
| Petition for Reinstatement | 1 | 0 | 0 | 1 |
| Presentment | 17 | 0 | 0 | 17 |
| Stipulation | 2 | 0 | 0 | 2 |
| Totals | 115 | 0 | 0 | 115 |

CASELOAD INFORMATION: FIGURE 3

COMPARATIVE CASELOAD ANALYSIS

Pending from 12/31/2014 to 12/31/2018



*Includes Presentments, Stipulations, Motions for Final Discipline, Motions for Reciprocal Discipline, Consents to Discipline, Remand, and R. 1:20-6(c)(1) matters.

CASELOAD INFORMATION: FIGURE 4

| ANNUAL DISPOSITION RATE | | | | | |
|--------------------------------|----------------|-----------------|--------------|-----------------|-------------------------|
| 2014 - 2018 | | | | | |
| YEAR | CARRIED | DOCKETED | TOTAL | DISPOSED | DISPOSITION RATE |
| 2014 | 114 | 401 | 515 | 411 | 79.8% |
| 2015 | 104 | 429 | 533 | 400 | 75% |
| 2016 | 133 | 443 | 576 | 424 | 73.6% |
| 2017 | 155 | 456 | 611 | 473 | 77.4% |
| 2018 | 138 | 428 | 566 | 451 | 80% |

CASELOAD INFORMATION: FIGURE 5

| AVERAGE RESOLUTION TIMES FOR BOARD CASES (IN MONTHS) | | | | | | |
|---|---|------|------|------|------|--|
| <u>R. 1:20-8(c)</u> | | 2015 | 2016 | 2017 | 2018 | |
| Discipline: | | | | | | |
| Presentments | 6 | 6.6 | 8.7 | 6.6 | 4.6 | |
| MFD | 6 | 6.9 | 7.3 | 6.9 | 5 | |
| MRD | 6 | 6.6 | 8.6 | 6.4 | 5.6 | |
| Defaults | 6 | 5.8 | 7.5 | 6 | 5.3 | |
| Consents | 6 | 2.5 | 3.2 | 2.7 | 3 | |
| Stipulations | 6 | 7 | 7.4 | 5.9 | 5.5 | |
| <u>R. 1:20-6(c)(1)</u> | 6 | 4.3 | 8.5 | 6.9 | 5.3 | |
| Remands | 6 | 5.2 | - | - | 2.7 | |
| Admonitions: | | | | | | |
| Standard | 6 | 2.9 | 3.8 | 2.9 | 2.9 | |
| By Consent | 6 | 2.6 | 2.9 | 2.6 | 3 | |
| Appeals: | | | | | | |
| Ethics Appeals | 3 | 2.6 | 3 | 2.8 | 3 | |
| Fee Appeals | 3 | 3 | 3 | 2.9 | 3.5 | |
| Other: | | | | | | |
| MTS | - | .7 | .8 | 1 | 1.7 | |
| Petitions to Restore | - | 1.5 | 2 | 1.3 | 1.3 | |

BOARD ACTION

Discipline

In 2018, the Board rendered dispositions in forty-six presentments, ten stipulations, twenty-eight motions for reciprocal discipline, and eighteen motions for final discipline. The Board decided thirty-two motions by consent for the imposition of discipline greater than an admonition.

Of the fifty-six defaults resolved by the Board, two were dismissed as moot due to the respondents' disbarment in other matters, four were administratively dismissed (due to service deficiencies), and one was remanded for further investigation or for a hearing.

The Board reviewed nineteen admonition matters in 2018. Of these, five resulted in letters of admonition after review on the papers; seven were treated as presentments; three were dismissed; one was deemed to require no additional discipline, two were administratively dismissed due to procedural deficiencies, and the Board decided to censure in one matter that was combined for the Court with a presentment matter. In addition, the Board resolved seven motions for imposition of admonition by consent. Of those, four resulted in letters of admonition, one was remanded, one was denied, and one resulted in no discipline.

The Board also reviewed and resolved twenty-four motions for temporary suspension, nine petitions for restoration, five R.1:20-6(c)(1) matters, and thirteen miscellaneous matters.

Appeals

The Board considered 164 appeals in 2018, eighteen fewer than in 2017. Of the seventy-eight ethics appeals reviewed in 2018, twelve cases (15.4%) were remanded by the Board to the district ethics committees for further action. The 2018 percentage of remand on ethics appeals was higher than the 6.4% experienced in 2017.

The rate of remand for fee appeals was higher than for ethics appeals in 2018: of the eighty-six fee appeals reviewed, twenty-four cases (27.9%) were remanded to the district fee arbitration committees, a rate higher than the 17.3% experienced in 2017. The reasons for fee remand varied: eight were for due process concerns, thirteen for a palpable mistake of law, one for a procedural error, and two to correct the calculation of the fee arbitration determination. In addition to these twenty-four remands, two matters were withdrawn by the appellant upon the Board's determination that the parties had settled the fee arbitration disputes. Lastly, one matter was administratively dismissed due to the issuance of a revised fee arbitration determination.

SUPREME COURT ACTION

In 2018, the Office of Board Counsel transmitted to the Supreme Court 137 formal decisions in presentments, stipulations, motions for final discipline, motions for reciprocal discipline, and default matters. In addition to those decisions, nine recommendations on petitions for reinstatement, fourteen recommendations on motions for temporary suspension, and eighteen determinations on motions for discipline by consent were sent to the Supreme Court.

Of the 137 formal decisions, the Supreme Court agreed with the Board's determination in 98% of the ninety cases for which it issued final orders in 2018. In two matters, the Supreme Court determined to impose a lesser degree of discipline. See Figure 6.

SUPREME COURT ACTION: FIGURE 6

2018 DISCIPLINE COMPARISON

| SUPREME COURT DISCIPLINE LESS THAN DRB DECISION | | |
|--|---|-----------------------------|
| ATTORNEY | DISCIPLINARY REVIEW BOARD DECISION | SUPREME COURT ACTION |
| Andrew Dwyer | Three-month suspension | Censure |
| Martin Streit | One-year suspension | Other ² |

² The Court ruled that, because respondent's license to practice law was revoked, no further action on the discipline matter was needed, unless respondent seeks to be re-admitted.

COLLECTION OF ADMINISTRATIVE COSTS

The Board uniformly assesses administrative costs in all discipline cases, including admonitions. The Supreme Court's final order of discipline generally includes a requirement that the respondent pay the administrative costs of the action to the Disciplinary Oversight Committee. Since the adoption of R. 1:20-17 in 1995, administrative costs have included a flat charge for basic administrative costs, ranging from \$650 to \$2,000 per case, depending on the case type, plus disciplinary expenses actually incurred, such as payments made by the disciplinary system for transcripts, court reporter services, file reproduction costs, and other out-of-pocket expenditures.

The Office of Board Counsel assesses and collects costs and, in certain cases, monetary sanctions, on behalf of the Disciplinary Oversight Committee. R. 1:20-17 provides various avenues of recourse for collection when an attorney fails to pay assessed costs, including automatic temporary suspension and entry of judgment. By the end of 2018, the Office of Board Counsel was current with cost assessment in every case in which the Supreme Court ordered costs to be paid. In 2018, the Supreme Court accepted consents to disbarment in eighteen matters unrelated to Board cases. Nevertheless, Office of Board Counsel staff assessed and began the collection process for Court-ordered costs in those matters, pursuant to R. 1:20-17.

During calendar year 2018, the Office of Board Counsel assessed disciplined attorneys a total of \$429,845, and collected \$330,624 which

represented costs that were assessed in 2018 and prior years. This was \$4,223 less than the \$334,847 collected in 2017.

The Office of Board Counsel filed four motions for temporary suspension in 2018 against respondents who failed to satisfy cost obligations. The amount due from those respondents was \$8,593 and no payments were received. In 2018, 129 judgments were filed totaling \$351,869. Payments totaling \$9,187 were received toward these judgments. Payments made toward judgments that were filed in 2018 and prior years totaled \$95,715.61.

The Office of Board Counsel also processes and collects payments of monetary sanctions that the Board imposes on respondents, typically when the OAE files a motion for temporary suspension to enforce a fee arbitration award. The Board imposed sixteen such sanctions in 2018, totaling \$7,150. Payments totaling \$3,150 were received to satisfy eight of those sanctions.

CONCLUSION

During calendar year 2019, the Board will continue to make every effort to manage its caseload both qualitatively and quantitatively. The Board strives for the prompt and fair disposition of all matters before it in order to effectively serve the primary goals of the attorney disciplinary process -- protection of the public and maintenance of public confidence in the bar.