

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



**ANNUAL REPORT
2008**

**Julianne K. DeCore
Chief Counsel
Disciplinary Review Board**

DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

LOUIS PASHMAN, ESQ., CHAIR
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June 15, 2009

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

I am pleased to submit to the Court the 2008 Annual Report of the Disciplinary Review Board. The Board concluded all matters pending from 2007. In 2008, the Board resolved 455 matters and transmitted 123 decisions to the Court.

The Office of Board Counsel welcomed two new members to the Disciplinary Review Board, Jeanne Doremus and Bruce Clarke, Esq., each of whom brought with them invaluable experience as former members of their respective District Ethics Committees. The Board worked hard throughout 2008 to reduce the backlog created by 2007's massive Tomar law firm disciplinary case and succeeded in increasing its 2008 disposition rate by 5% over what it achieved in 2007. The recent automation of routine cost assessment functions enabled the DRB Cost Unit to remain current on all costs assessed by Court order in 2008 and to continue to focus on collecting older outstanding balances. Overall, these efforts resulted in the collection of \$383,490, which was \$177,959 more than the amount collected in 2007.

As in 2008, 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 cursive script that reads "Julianne K. DeCore".

Julianne K. DeCore
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) investigates grievances in selected districts and exercises statewide jurisdiction over complex and emergent matters. The Board reviews all recommendations for discipline from the districts and from the OAE. 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. The Board's determinations of appeals from dismissals of ethics grievances and of appeals from Fee Arbitration Committee rulings are absolutely 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 2008, each New Jersey attorney admitted to practice between 1960 and 2004 was assessed a total of \$186 to pay for the disciplinary system. Attorneys admitted to practice in 2005 or 2006 were assessed a total of \$161, while attorneys in the first calendar year of admission were assessed \$35.

All Board members are volunteers, however, its staff is professional. The 2008 budget for the disciplinary system, as approved by the Supreme Court, allocated \$1,881,221 to cover salaries and benefits for Office of Board Counsel employees, and an additional \$170,350 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 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, annual audits of trust account records, 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 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.

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 advertisement and other related communications" R. 1:19A-4(a).

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 may issue 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 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 and the Board's deliberation, the Office of Board Counsel prepares a formal decision for the Board's review and, after Board 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.

Effective 1995, the Supreme Court adopted two other disciplinary case procedures: motions for discipline by consent and default actions. Both are intended to expedite the resolution of certain matters.

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, or deny it and remand the case to the district ethics committee or to the OAE for appropriate action.

A matter achieves default status after an attorney fails to file a verified answer to a formal ethics complaint. The district ethics committee or the OAE then certifies the record directly to the Board for the imposition of sanction. R. 1:20-4. 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. A formal decision is thereafter filed with the Supreme Court.

The Board also reviews direct appeals from grievants who claim that a district ethics committee improperly dismissed their grievance after an investigation or a hearing, and from parties 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.

BOARD MEMBERSHIP

The Board consists of nine members appointed by the Supreme Court. Board members serve without compensation. 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 2008, the Board was chaired by Louis Pashman, Esq., and Bonnie C. Frost, Esq., was Vice-Chair.

The Board's members as of April 1, 2008 were:

Chair, Louis Pashman, Esq.

Mr. Pashman, of Upper Saddle River, was admitted to the New Jersey Bar in 1967 and was appointed to the Board in 2001. He is a Certified Civil Trial Attorney and a member of the firm of Pashman Stein, P.C. Mr. Pashman served as a member of the Bergen County Ethics Committee from 1976 to 1981 (as Chair from 1978 to 1981), as a member of the Supreme Court Committee on Matrimonial Litigation and as a member of the Supreme Court Committee on Judicial Performance.

Vice-Chair, Bonnie C. Frost, Esq.

Ms. Frost, of Bernardsville, is a member of the firm of Einhorn, Harris, Ascher, Barbarito, Frost & Ironson, 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 1993 (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, Second Vice President of the New Jersey Chapter of the American Academy of Matrimonial Lawyers, member of the Supreme Court Family Practice Committee, a member of the Supreme Court Committee for Standardization of Family Law and a member of the New Jersey State Bar Association Appellate Practices Committee. Ms. Frost received her B.A. from Douglass College and her M.Ed. and Ed.S. from Rutgers University.

Edna Y. Baugh, Esq.

Ms. Baugh, of Maplewood, is a founding member of Stephens & Baugh, LLC, and is Assistant Director of Clinic Administration at Rutgers School of Law – Newark. In 1983 she was the first African-American woman to earn a Juris Doctor from Vermont Law School and was admitted to the New Jersey Bar in 1984. She was appointed to the Board in 2006. Ms. Baugh was a member of the District V-B Ethics Committee from 1998 to 2002 and has been a member of the Supreme Court Committee on the Tax Court. She was elected the first African-American President of the Girl Scout Council of Greater Essex and Hudson Counties in 1995 and is a past president of the Garden State Bar Association.

Matthew P. Boylan, Esq.

Mr. Boylan, of Wyckoff, is a member of the firm of Lowenstein Sandler, P.C. He was appointed to the Board in 1999. Mr. Boylan was admitted to the New Jersey Bar in 1958 and has more than forty years experience as a litigator before the state and federal courts. He is a former Director of the Division of Criminal Justice in New Jersey, and served on the New Jersey Trial Attorney Certification Board from 1980 to 1984. He is a fellow of the American Bar Association and of the American College of Trial Lawyers, as well as a member of the Trial Attorneys of New Jersey.

Bruce W. Clark, Esq.

Mr. Clark, of Pennington, is a partner at Dechert, 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 on April 18, 2008. Mr. Clark is a graduate of the University of Virginia and the George Washington University National Law Center.

Jeanne N. Doremus

Jeanne N. Doremus, of Bridgeton, is a retired educator. She graduated from Connecticut College with a major in government, received a masters degree from Fairleigh Dickinson University, and has taken post graduate courses related to social studies education. She taught high school social studies for 16 years in the Vineland School District, and served 9 years as a supervisor of instruction and curriculum development. She was a member of the District 1 Ethics Committee for 4 years before being appointed to the Disciplinary Review Board in 2008. In addition to serving as a public member of the DRB, Ms. Doremus is a volunteer for several local organizations.

Ruth Jean Lolla

Mrs. Lolla, of Tuckerton, was appointed to the Board in 1996. She is a former member of the District IIIA Ethics Committee and served a term with the District IIIA Fee Arbitration Committee. Mrs. Lolla is a graduate of the University of Pennsylvania School of Dental Hygiene, a retired dental hygienist, and the mother of six.

Hon. Reginald Stanton

Judge Stanton, of Morristown, was appointed to the Board in 2003. He served in the judiciary from 1975 to 2003 when he reached the mandatory retirement age for Superior Court judges. He was the Assignment Judge for the Morris/Sussex Vicinage for the last seventeen years of his judicial service. He is currently of counsel with the firm of Drinker Biddle & Reath in Florham Park.

Spencer V. Wissinger, III

Mr. Wissinger, of Bernardsville, was appointed to the Board in 1999, and is a former member of the District X Ethics Committee. He is a CPA and a principal in the firm of Parente Randolph, LLC. He is a member of the American Institute of Certified Public Accountants and the New Jersey State Society of Certified Public Accountants, as well as a member of the Kiwanis Club of Morristown and its Treasurer since 1976.

OFFICE OF BOARD COUNSEL

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

In 2008, the Office of Board Counsel was comprised of seven attorneys (Chief Counsel, Deputy Chief Counsel, First Assistant Counsel, and four Assistant Counsel), one information technology analyst, one administrative supervisor, two administrative specialists, one technical assistant, and five secretaries until July 1, 2008, when one retired.

Since 1991, the Office of Board Counsel had furnished pre-hearing memoranda to the Board in serious disciplinary cases, motions for consent to discipline greater than an admonition, and those other 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, and a pertinent analysis of both, ultimately arriving at a recommendation for the appropriate discipline based thereon.

CASELOAD INFORMATION

The Board carried 134 matters into January 2008. See Figure 1. By December 31, 2008, all of those matters had been resolved. See Figure 2.

Of the 129 matters pending on December 31, 2008, twenty-eight (21.7%) were presentments; ten (7.8%) were stipulations; eight (6.2%) were defaults; seven (5.4%) were admonitions; nine (7%) were motions for discipline by consent; two (1.6%) were motions for final discipline and four (3.1%) were motions for reciprocal discipline. Forty-two percent of the total pending caseload consisted of fifty-four fee and ethics appeals. Three petitions for restoration and one R. 1:20-6(c)(1) matter made up the remainder. See Figures 1 and 2. Figure 3 provides a graphic representation of the pending Board caseload at the close of 2008, as compared to year-end pending caseloads for 2004 through 2008.

During calendar year 2008, the Office of Board Counsel docketed 450 matters for review by the Board, thirty-two more than the 418 docketed in 2007. The number of ethics appeals increased in 2008: 112 appeals were filed in 2008, while eighty-two were filed in 2007. The number of fee appeals filed in 2008 also increased: 116 fee appeals were docketed in 2008, as compared to ninety-eight fee appeals docketed in 2007. Admonition filings were lower: seventeen were docketed in 2008, compared to twenty-eight in 2007. See Figure 1.

In all, the Board resolved 455 of the total 584 matters carried into or docketed during calendar year 2008 – a disposition rate of 78%. As Figure 4 demonstrates, the Board's disposition rate increased from the 73% achieved in 2007.

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, while all ethics and fee arbitration appeals have a three-month resolution requirement. See Figure 5.

Although 2008 case disposition time increased as to most case types when compared to the previous year, the Board was nevertheless under the time limits set by R. 1:20-8(c) with respect to all categories of cases except presentments, motions for reciprocal discipline, and both ethics and fee appeals.

CASELOAD INFORMATION: FIGURE 1

| DRB ANNUAL ACTIVITY REPORT | | | | | |
|---|----------------|-----------------|--------------|-----------------|----------------|
| JANUARY 1, 2008 TO DECEMBER 31, 2008 | | | | | |
| Case Type | Carried | Docketed | Total | Disposed | Pending |
| Presentment | 19 | 50 | 69 | 43 | 26 |
| Stipulation | 11 | 15 | 26 | 16 | 10 |
| Admonition/Presentment | 2 | 5 | 7 | 5 | 2 |
| Motion for Final Discipline | 6 | 11 | 17 | 15 | 2 |
| Motion for Reciprocal Discipline | 8 | 13 | 21 | 17 | 4 |
| Default | 13 | 44 | 57 | 49 | 8 |
| Admonition | 12 | 17 | 29 | 22 | 7 |
| Consent to Admonition | 2 | 5 | 7 | 2 | 5 |
| Consent to Disbarment/Costs | 0 | 19 | 19 | 19 | 0 |
| Consent to Discipline | 3 | 8 | 11 | 7 | 4 |
| Ethics Appeal | 23 | 112 | 135 | 114 | 21 |
| Fee Appeal | 32 | 116 | 148 | 115 | 33 |
| Motion for Temporary Suspension | 0 | 8 | 8 | 7 | 1 |
| Petition for Restoration | 2 | 14 | 16 | 13 | 3 |
| Miscellaneous | 0 | 4 | 4 | 3 | 1 |
| <u>R. 1:20-6(c)(1)</u> | 1 | 4 | 5 | 4 | 1 |
| Motion for Reconsideration | 0 | 5 | 5 | 4 | 1 |
| Totals | 134 | 450 | 584 | 455 | 129 |

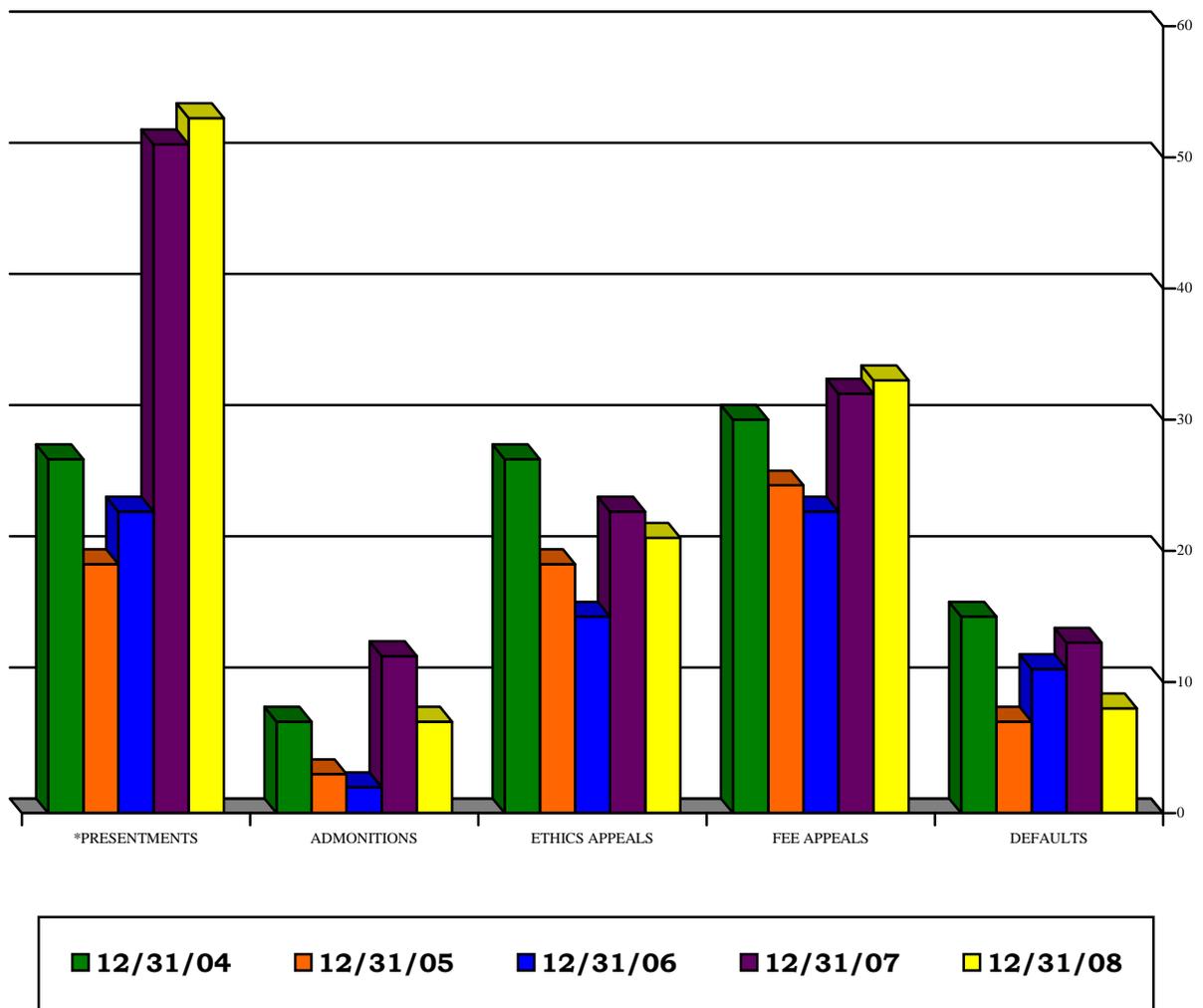
CASELOAD INFORMATION: FIGURE 2

| AGE OF PENDING CASES – BY CASE TYPE | | | | |
|--|-------------|-------------|--------------|----------------------|
| As of December 31, 2008 | | | | |
| Case Type | 2008 | 2007 | Prior | Total Pending |
| Presentment | 26 | 0 | 0 | 26 |
| Admonition/Presentment | 2 | 0 | 0 | 2 |
| Stipulation | 10 | 0 | 0 | 10 |
| Motion for Final Discipline | 2 | 0 | 0 | 2 |
| Motion for Reciprocal Discipline | 4 | 0 | 0 | 4 |
| Default | 8 | 0 | 0 | 8 |
| Admonition | 7 | 0 | 0 | 7 |
| Consent to Discipline | 9 | 0 | 0 | 9 |
| Ethics Appeal | 21 | 0 | 0 | 21 |
| Fee Appeal | 33 | 0 | 0 | 33 |
| Petition for Restoration | 3 | 0 | 0 | 3 |
| R. 1:20-6(c)(1) | 1 | 0 | 0 | 1 |
| Motion for Temporary Suspension | 1 | 0 | 0 | 1 |
| Miscellaneous | 1 | 0 | 0 | 1 |
| Motion for Reconsideration | 1 | 0 | 0 | 1 |
| Totals | 129 | 0 | 0 | 129 |

CASELOAD INFORMATION: FIGURE 3

COMPARATIVE CASELOAD ANALYSIS

Pending from 12/31/2004 to 12/31/2008



*Includes Presentments, Stipulations, Motions for Final Discipline, Motions for Reciprocal Discipline, and Consents to Discipline.

CASELOAD INFORMATION: FIGURE 4

| ANNUAL DISPOSITION RATE | | | | | |
|--------------------------------|----------------|-----------------|--------------|-----------------|-------------------------|
| 2004 - 2008 | | | | | |
| YEAR | CARRIED | DOCKETED | TOTAL | DISPOSED | DISPOSITION RATE |
| 2004 | 147 | 463 | 610 | 497 | 81% |
| 2005 | 113 | 370 | 483 | 406 | 84% |
| 2006 | 77 | 361 | 438 | 356 | 81% |
| 2007 | 82 | 418 | 500 | 366 | 73% |
| 2008 | 134 | 450 | 584 | 455 | 78% |

CASELOAD INFORMATION: FIGURE 5

| AVERAGE RESOLUTION TIMES FOR BOARD CASES (IN MONTHS) | | | | | | |
|---|---|------|------|------|------|--|
| <u>R. 1:20-8(c)</u> | | 2005 | 2006 | 2007 | 2008 | |
| Discipline: | | | | | | |
| Presentments | 6 | 3.2 | 4.2 | 6.9 | 6.6 | |
| MFD | 6 | 3.6 | 3.5 | 5.3 | 6 | |
| MRD | 6 | 4.3 | 3.5 | 4.9 | 6.2 | |
| Defaults | 6 | 2.6 | 2.7 | 4.6 | 4.8 | |
| Consents | 6 | 1.6 | 2.2 | 5 | 4.7 | |
| Stipulations | 6 | 3.5 | 3.2 | 4.4 | 5.2 | |
| Admonitions: | | | | | | |
| Standard | 6 | 2.3 | 2.6 | 3.8 | 4.3 | |
| By Consent | 6 | 2.2 | 2.1 | 2.5 | 4.6 | |
| Appeals: | | | | | | |
| Ethics Appeals | 3 | 3.1 | 2.7 | 3 | 3.2 | |
| Fee Appeals | 3 | 3.4 | 3.4 | 3.9 | 3.6 | |
| Other: | | | | | | |
| MTS | - | 3.8 | 2.5 | 1.5 | 1.6 | |
| Petitions to Restore | - | 1.9 | 1.2 | 1.6 | 1.2 | |

BOARD ACTION

Discipline

In 2008, the Board rendered dispositions in forty-three presentments, sixteen stipulations, seventeen motions for reciprocal discipline, and fifteen motions for final discipline. The Board imposed discipline in five of the seven motions for imposition of discipline by consent considered by the Board. The two remaining motions were denied.

Of the forty-nine defaults resolved by the Board, one was remanded to the district ethics committees, one was vacated, one was withdrawn, two were dismissed as moot, one was dismissed due to the respondent's death, and six were administratively dismissed largely for improper service of the complaint.

The Board reviewed twenty-two admonition matters in 2008. Of these, nine resulted in letters of admonition after review on the papers, seven were scheduled for oral argument as presentments, and six were dismissed. None were remanded to the district ethics committee. Two matters came before the Board as motions for imposition of admonition by consent; one was granted, the other was remanded to the District Ethics Committee.

The Board also reviewed and resolved seven motions for temporary suspension, thirteen petitions for restoration, and four matters submitted pursuant to R. 1:20-6(c)(1) (case considered by the Board on the pleadings because no genuine issue of material fact existed).

Appeals

The Board considered 229 appeals in 2008. Of the 114 ethics appeals reviewed in 2008, twelve cases (10.5%) were remanded by the Board to the district ethics committees for further action. The rate of remand on ethics appeals was lower than the 14.9% experienced in 2007.

The rate of remand for fee appeals was higher than for ethics appeals in 2008: of the 115 fee appeals reviewed, twenty-one cases (18.3%) were remanded to the district fee arbitration committees, which was significantly lower than the 24.7% experienced in 2007. Although the reasons for fee remand varied, the majority resulted from procedural error at the district level, and lack of adequate notice of the hearing.

SUPREME COURT ACTION

In 2008, the Office of Board Counsel transmitted a total of 129 matters to the Supreme Court. Of those, 123 decisions were in presentments, stipulations, admonition-presentments, motions for final discipline, motions for reciprocal discipline, default and R. 1:20-6(c)(1) matters. Six matters were petitions for reinstatement.

Of the those decisions, the Supreme Court agreed with the Board's determination in 81% of the cases for which it issued final orders in 2008. In fifteen instances, the Supreme Court determined to impose different discipline. See Figure 6. Those cases where the Board and the Supreme Court diverged generally reflect differences in the degree of discipline, rather than differences as to factual or legal findings. In five matters the Supreme Court imposed discipline greater than did the Board, and the Supreme Court imposed a lesser degree of discipline in ten matters.

SUPREME COURT ACTION: FIGURE 6

2008 DISCIPLINE COMPARISON

| SUPREME COURT DISCIPLINE GREATER THAN DRB DECISION | | |
|---|---|-----------------------------|
| ATTORNEY | DISCIPLINARY REVIEW BOARD DECISION | SUPREME COURT ACTION |
| Thomas Allen | 6 Month Suspension | Indefinite Suspension |
| Richard Banas | 6 Month Suspension | 3 Year Suspension |
| Saul Berkman | 3 Month Suspension | 9 Month Suspension |
| Anthony Jones | Reprimand | Censure |
| Marcia Kasdan | Reprimand | Censure |

| SUPREME COURT DISCIPLINE LESS THAN DRB DECISION | | |
|--|---|-----------------------------|
| ATTORNEY | DISCIPLINARY REVIEW BOARD DECISION | SUPREME COURT ACTION |
| Ronald Barrett | Reprimand | Admonition |
| Marvin Brandon | Censure | Reprimand |
| Gordon Gemma | Reprimand | Admonition |
| Daniel Hediger | 3 Month Suspended Suspension | Reprimand |
| Warren Homan | 3 Month Suspension | Censure |
| Harry J. Levin | Reprimand | Admonition |
| Alan Mariconda | Reprimand | Admonition |
| John Morris | Reprimand | Admonition |
| Andrew Poley | 3 Month Suspension | Censure |
| Patricia Rivera | Reprimand | Admonition |

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 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 where an attorney fails to pay assessed costs, including automatic temporary suspension and entry of judgment. By the end of 2008, the Office of Board Counsel was current with cost assessment in every case where assessment was Supreme Court ordered. In 2008, the Supreme Court accepted consents to disbarment in nineteen 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 2008, Office of Board Counsel's assessments of disciplined attorneys totaled \$430,696. Board Counsel's Office collected \$383,490 representing costs that were assessed in 2008 and prior years. This was \$177,959 more than the amount collected in 2007 (\$205,531).

The Office of Board Counsel filed forty-one judgments in 2008, and received payments on eight of those totaling \$27,607.

The Office of Board Counsel also processes and collects payments of monetary sanctions imposed upon respondents by the Board, most typically when the OAE files a motion for temporary suspension to enforce a fee arbitration award. The Board imposed one such sanction in 2008, and it remains unpaid.

CONCLUSION

During calendar year 2009, the Board will continue to make every effort to ensure that its caseload remains under control. 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.

APPENDIX I
2008 ADMONITION REPORT

| ATTORNEY | DOCKET # | DATE |
|---|-----------------|-------------------------|
| Paul L. Abramo | 08-209 | October 20, 2008 |
| <p>After terminating his professional association with John D. Williams, Esq., respondent continued to use the name “Abramo and Williams” on the firm’s letterhead for three years, despite Mr. Williams’ requests that his name be removed from any location or source indicating the existence of a professional association with respondent. Respondent’s conduct violated <u>RPC</u> 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 <u>N.J.L.J.</u> 600 (1971), which permit the use of the name of an attorney no longer associated with a firm only when that attorney is retired.</p> | | |
| William P. Deni, Sr. | 07-337 | January 23, 2008 |
| <p>A random audit of respondent’s books disclosed that between 2004 and 2007, respondent had routinely deposited earned legal fees into his trust account, rather than his business account, resulting in the commingling of more than one million dollars of his personal funds with client funds. In addition, the OAE random audit uncovered several recordkeeping deficiencies. Respondent’s conduct violated <u>RPC</u> 1.15(a) and <u>RPC</u> 1.15(d), respectively.</p> | | |
| Maria M. Dias | 08-138 | July 29, 2008 |
| <p>While on the Supreme Court list of ineligible attorneys for failure to pay the assessment to the New Jersey Lawyers’ Fund for Client Protection, respondent made appearances in numerous cases for other attorneys on a part-time, per diem basis, and in two of her own cases.</p> | | |
| Paul Gauer | 08-208 | December 5, 2008 |
| <p>Respondent lost his clients’ file and ceased communicating with them. Respondent made no effort to locate the clients’ address from motion papers, documents on his office computer, his adversary, or the court. His failure to do so left the clients uninformed about the status of their case, a violation of <u>RPC</u> 1.4(b).</p> | | |
| Thomas J. Haggerty | 08-029 | July 24, 2008 |
| <p>Although respondent filed a complaint in a personal injury matter, he thereafter lacked diligence in handling the case, a violation of <u>RPC</u> 1.3. He also failed to reply to the client’s multiple requests for information about the status of the case, a violation of <u>RPC</u> 1.4(b). Finally, respondent failed to cooperate with disciplinary authorities in their ethics investigation, a violation of <u>RPC</u> 8.1(b).</p> | | |

**APPENDIX I
2008 ADMONITION REPORT (CONTINUED)**

| ATTORNEY | DOCKET # | DATE |
|--|-----------------|------------------------|
| Christopher W. Hyde | 08-173 | July 24, 2008 |
| <p>Respondent violated <u>RPC</u> 5.5(a) and <u>R.</u> 1:28-2 by engaging in the practice of law from September 2005 to June 2006, while on the Supreme Court list of ineligible attorneys for failure to pay the assessment to the New Jersey Lawyers' Fund for Client Protection.</p> | | |
| Stephen D. Kinnard | 07-410 | April 17, 2008 |
| <p>Between the summer of 2006 and May 2007, respondent practiced law at a time when he was on the Supreme Court's list of ineligible attorneys, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.</p> | | |
| Theresa A. Markham | 08-083 | May 30, 2008 |
| <p>Respondent was retained in a divorce action. The fee agreement required her to send the client itemized bills on a regular basis. In particular, the agreement provided that the client would receive weekly invoices "every Tuesday for all communications and work performed the previous week." However, respondent never sent a bill for her services. After the client terminated her services, the client made several requests for a final statement and a refund of any unused portion of the retainer. Respondent did not comply with the requests, in violation of <u>RPC</u> 1.4(b).</p> | | |
| Brian J. Muhlbaier | 08-165 | October 1, 2008 |
| <p>In 2005 respondent represented a client in a number of collection cases. After the termination of the representation, respondent refused, for a period of months in 2006, to turn those files over to subsequent counsel, who had requested their return. Respondent did so in an attempt to compel the client to pay about \$20,000 in outstanding legal fees. In so doing, respondent violated <u>RPC</u> 1.16(d).</p> | | |

**APPENDIX I
2008 ADMONITION REPORT (CONTINUED)**

| ATTORNEY | DOCKET # | DATE |
|---|-----------------|-----------------------|
| Sanford R. Oxfeld | 07-415 | March 28, 2008 |
| <p>Respondent was appointed by the New Jersey Education Association (NJEA) to consult with a member in connection with her termination of employment as a non-tenured special education teaching assistant/education aide with the West Orange Board of Education. At one point during his representation, the Board of Education made a settlement offer. In spite of his duty to keep his client reasonably informed of the status of her matter, he did not always comply with her requests for information about the status of the settlement with the Board of Education. Respondent admitted that, for a period of six months, the client repeatedly attempted to obtain a progress report, to no avail. Despite her numerous letters, phone calls, and faxes, on only one occasion did respondent communicate with her. Although it was possible that there was nothing new to communicate to the client, respondent still had an obligation to reply to her inquiries, even if only to apprise her that there were no new developments. In this regard, respondent violated <u>RPC</u> 1.4(b). Respondent also violated <u>RPC</u> 1.4(c), when he failed to explain to the client, in detail, the terms and consequences of the Board of Education's settlement offer. It was clear from the client's communications to respondent that she did not quite comprehend the scope and ramifications of the settlement. Instead of explaining them to her, he ignored her attempts at clarification.</p> | | |
| Michael J. Palmer | 07-382 | March 6, 2008 |
| <p>The OAE conducted a random audit of respondent's books, which disclosed that, between 2002 and 2006, respondent negligently misappropriated more than \$30,000 in client and escrow funds in five real estate transactions in which he represented the buyer. Respondent was unaware of these invasions of client and escrow funds because he did not reconcile his trust account. Respondent's conduct was unethical and a violation of <u>RPC</u> 1.15(a) and <u>RPC</u> 1.15(d).</p> | | |
| Fred Parker | 07-381 | March 17, 2008 |
| <p>In September 2001, respondent was retained to file a complaint to foreclose on a lien on property in Millville. For two years, respondent took no action. Finally, he filed a complaint in September 2003. In July 2005, an amended complaint was returned by the clerk's office for failure to file a certification to accompany default. As of May 2006, one year later, respondent still had not filed a certification. Respondent's conduct was unethical and a violation of <u>RPC</u> 1.3. In addition, from August 2002 to August 2003, respondent failed to reply to messages left by the client on his answering machine and to an unspecified number of emails, a violation of <u>RPC</u> 1.4(b).</p> | | |

**APPENDIX I
2008 ADMONITION REPORT (continued)**

| ATTORNEY | DOCKET # | DATE |
|---|-----------------|-------------------------|
| David J. Percely | 08-008 | June 9, 2008 |
| <p>For over three years after a settlement in a personal injury action, respondent did not remit to the client the balance of the settlement funds to which she was entitled. His conduct in this regard violated <u>RPC</u> 1.15(b). Respondent also lacked diligence in the matter (<u>RPC</u> 1.3), failed to cooperate with ethics authorities during the investigation of the grievance (<u>RPC</u> 8.1(b)), and wrote a trust account check to “cash”, contrary to <u>R.</u> 1:21-6(c)(1)(A).</p> | | |
| Carlos A. Rendo | 08-040 | May 19, 2008 |
| <p>The letterhead of respondent’s law firm was required to indicate the jurisdictional limitations of those attorneys not licensed to practice in New Jersey. Respondent’s use of a misleading letterhead constituted a violation of <u>RPC</u> 7.1(a) and <u>RPC</u> 7.5(a).</p> | | |
| Karen E. Ruchalski | 07-391 | March 28, 2008 |
| <p>Respondent was retained to represent a client in connection with a post-judgment matrimonial motion and cross-motion. During the representation, respondent did not adequately communicate with the client. Specifically, she did not provide copies of documents filed with the court on his behalf, did not inform him of the re-scheduled return date of a motion, and did not notify him of the outcome of the motion. She also failed to reply to two letters from the ethics investigator and practiced law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers’ Fund for Client Protection. Respondent’s conduct violated <u>RPC</u> 1.4(b), <u>RPC</u> 8.1(b), and <u>RPC</u> 5.5(a), respectively.</p> | | |
| Todd E. Schoenwetter | 07-348 | February 1, 2008 |
| <p>In an action for injuries sustained in an automobile accident, respondent settled the matter favorably, however, he failed to advise the client during the case that a medical provider was sending her quarterly bills to his office. When the medical provider billed the client directly for the sum, respondent failed to reply to the client’s reasonable requests for information about the case for several months. Respondent’s conduct amounted to failure to communicate with the client, a violation of <u>RPC</u> 1.4(b). In addition, respondent’s failure to promptly heed the DEC’s repeated requests for his file in this matter violated <u>RPC</u> 8.1(b).</p> | | |

**APPENDIX I
2008 ADMONITION REPORT (continued)**

| ATTORNEY | DOCKET # | DATE |
|---|-----------------|-------------------------|
| Norman J. Shabel | 07-344 | February 1, 2008 |
| <p>In a workers' compensation and personal injury case, respondent stipulated that, by failing to periodically advise his client about the extent of mounting legal fees, he violated <u>RPC</u> 1.4(b).</p> | | |
| Frank J. Shamy | 07-346 | April 15, 2008 |
| <p>Respondent signed a client's name to a release and had his secretary notarize the signature, in violation of <u>RPC</u> 4.1(a)(1), <u>RPC</u> 5.3(c)(1), and <u>RPC</u> 8.4(c). In addition, he made small, interest-free loans to three clients, without first advising them to consult with independent counsel, in violation of <u>RPC</u> 1.8(a) and <u>RPC</u> 1.8(e).</p> | | |
| Keith T. Smith | 08-187 | October 1, 2008 |
| <p>In 2004, respondent represented a client in a personal injury matter, pursuant to a fee-sharing agreement with another attorney. His inaction caused the dismissal of the complaint. Thereafter, he failed to take steps to have the complaint reinstated. In addition, he failed to contact the client about the status of his case. Respondent's conduct was unethical and a violation of <u>RPC</u> 1.1(a), <u>RPC</u> 1.3, <u>RPC</u> 1.4(b), and <u>RPC</u> 1.4(c). Finally, respondent conceded that the fee-sharing agreement between him and the other attorney violated <u>RPC</u> 1.5(e), insomuch as the proportionality of the other attorney's fee (forty percent) was not reasonable for the limited work that he performed. Moreover, it is not clear that his client consented to his participation in the matter.</p> | | |
| Robert F. Spencer | 08-068 | May 30, 2008 |
| <p>Respondent prepared a last will and testament for a client who passed away in the spring of 2007. Although respondent was not related to the client, he was one of ten residuary beneficiaries named in the will that he prepared. His conduct was unethical and a violation of <u>RPC</u> 1.8(c).</p> | | |
| Lewis N. White, III | 07-284 | January 23, 2008 |
| <p>Since September 2005, respondent had been on the Supreme Court's ineligible list for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. Nevertheless, in February 2006, respondent filed a notice of appearance in a Lawrence Township Municipal Court matter. Moreover, between September 2005 and December 2006, he wrote "checks for discovery from courts on three occasions." His conduct was a violation of <u>RPC</u> 5.5(a).</p> | | |

ADMONITIONS BY SUPREME COURT ORDER

| ATTORNEY | DOCKET # | DATE |
|---|---------------|-------------------------|
| Ronald D. Barrett | 08-046 | October 7, 2008 |
| <p>Respondent violated the Surrogate Court's order that required him to disburse estate funds to the permanent administrator in an estate matter. After the sale of real property, respondent failed to properly disburse funds from the sale and failed to respond to requests for information and for the disbursal of the funds. Respondent violated <u>RPC</u> 1.4(b); <u>RPC</u> 1.15(b); <u>RPC</u> 1.15(d); and <u>RPC</u> 3.4(c).</p> | | |
| Gordon Nicholas Gemma | 07-282 | July 27, 2007 |
| <p>Respondent negligently misappropriated client funds in seven real estate matters, as the result of poor recordkeeping practices, thereby violating <u>RPC</u> 1.15(a)(negligent misappropriation), <u>R.</u> 1:21-6(c) and (d) and <u>RPC</u> 1.14(d)(recordkeeping violations).</p> | | |
| Harry J. Levin | 07-132 | January 15, 2008 |
| <p>By attempting to influence the grievant and her son to withdraw the grievance and for using extremely discourteous and intimidating language in a letter to the grievant, respondent violated <u>RPC</u> 3.2 and <u>RPC</u> 8.4(d).</p> | | |
| Alan J. Mariconda | 07-390 | October 19, 2007 |
| <p>Respondent relied on his office manager to handle all of the law firm's finances without proper supervision from respondent. The office manager was also respondent's brother, who admitted to stealing client funds without respondent's knowledge. Respondent violated <u>RPC</u> 5.3(a) and (b)(failure to supervise non-attorney employees), <u>RPC</u> 1.15(a)(negligent misappropriation), <u>RPC</u> 1.15(d) and <u>R.</u> 1:21-6(recordkeeping violations).</p> | | |
| John P. Morris | 08-067 | October 16, 2008 |
| <p>Respondent engaged in a concurrent conflict of interest when he continued to represent a client who he discovered was having an affair with his wife. Respondent named the client as a co-respondent in his divorce complaint, thereby violating <u>RPC</u> 1.7(a)(2).</p> | | |
| Patricia Weston Rivera | 07-335 | October 1, 2007 |
| <p>Respondent negligently misappropriated trust funds in two client matters; charged an excessive fee in eighteen personal injury matters by calculating the fee based on gross settlement proceeds and deducting improper overhead charges from the client's share of the settlement proceeds; and committed fourteen different recordkeeping violations. In total, respondent violated <u>RPC</u> 1.15(a) (negligent misappropriation), <u>RPC</u> 1.5 (a) (unreasonable fee), and <u>RPC</u> 1.15 (d) and <u>R.</u> 1:21-6 (recordkeeping deficiencies).</p> | | |