

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



**ANNUAL REPORT
2017**

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

DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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June 4, 2018

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

I am pleased to submit to the Court the 2017 Annual Report of the Disciplinary Review Board. The Board concluded all matters pending from 2016. In 2017, the Board resolved 473 matters and transmitted to the Court 136 decisions in disciplinary cases.

In calendar year 2017, the Office of Board Counsel continued making progress toward e-filing and 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 1990. We will continue to upload past decisions to provide as complete an archive as possible.

In addition, in 2017, the Office of Board Counsel collected \$334,847 in disciplinary costs assessed against attorneys.

As in 2017, 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".

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 2017, 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 2017 budget for the disciplinary system, as approved by the Supreme Court, allocated \$2,301,051 to cover salaries and benefits for Office of Board Counsel employees and an additional \$215,825 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 2017, the Board was chaired by Bonnie C. Frost, Esq., and Edna Y. Baugh, Esq., was Vice-Chair.

The Board's members in 2017 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, Edna Y. Baugh, Esq.

Ms. Baugh, of East Orange, is the Superintendent of Elections and Commissioner of Registration for Essex County. Prior to her appointment as Superintendent in September 2015, she was a founding member of Stephens & Baugh, LLC. 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 and has served as Vice-Chair since 2013. Ms. Baugh was a member of the District VB Ethics Committee and a past member of the Supreme Court Committee on the Tax Court. She was the first African-American President of the Girl Scout Council of Greater Essex and Hudson Counties and is a past president of the Garden State Bar Association. She is a member of the board of trustees of Vermont Law School.

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.

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.

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.

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 2017, 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 155 matters into January 2017, twenty-two more than it carried into 2016. See Figure 1. By December 31, 2017, all of those matters had been resolved. See Figure 2.

One hundred thirty-eight matters were pending on December 31, 2017: nineteen (13.8%) presentments; two (1.4%) stipulations; nineteen (13.8%) defaults; four (2.9%) admonitions; seven (5.1%) motions for discipline by consent; eleven (8%) motions for final discipline; sixteen (11.6%) motions for reciprocal discipline; fifty fee and ethics appeals (36.2%); one petition for restoration, three motions for temporary suspension (2.9%), two pursuant to R.1:20-6(c)(1), and one miscellaneous matter. See Figures 1 and 2. Figure 3 provides a graphic representation of the pending Board caseload at the close of 2017, as compared to year-end pending caseloads for 2013 through 2016.

During calendar year 2017, the Office of Board Counsel docketed 456 matters for review by the Board, thirteen more than 2016 and twenty-seven more than the 429 docketed in 2015. The number of ethics appeals decreased in 2017: seventy-five appeals were filed in 2017, while ninety-two were filed in 2016. The number of fee appeals filed in 2017 increased: 108 fee appeals were docketed in 2017, compared to ninety-four fee appeals docketed in 2016. Admonition filings increased slightly: eleven were docketed in 2017, while ten were docketed in 2016.

In all, the Board resolved 473 of the 611 matters carried into or docketed during calendar year 2017 – a disposition rate of 77.4%. Figure 4 compares the Board's disposition rates from 2013 to 2017.

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.

Fee appeals processing times improved slightly in 2017 and ethics appeals processing times decreased. Both fee and ethics appeals processing times were below the allotted resolution times. Disposition times for all other case types were lower than the prior year and only slightly higher, in a few case types, than the recommended timeframe of six months. Vacancies in the Office of Board Counsel, primarily long-term absences due to health issues, did not negatively affect disposition rates.

CASELOAD INFORMATION: FIGURE 1

| DRB ANNUAL ACTIVITY REPORT | | | | | |
|---|----------------|-----------------|--------------|-----------------|----------------|
| JANUARY 1, 2017 TO DECEMBER 31, 2017 | | | | | |
| Case Type | Carried | Docketed | Total | Disposed | Pending |
| Admonition/Presentment | 4 | 8 | 12 | 6 | 6 |
| Admonition | 3 | 11 | 14 | 11 | 3 |
| Appeal/Presentment | 1 | 2 | 3 | 3 | 0 |
| Consent to Admonition | 1 | 4 | 5 | 1 | 4 |
| Consent to Discipline | 5 | 36 | 41 | 34 | 7 |
| Consent to Disbarment/Costs | 0 | 14 | 14 | 14 | 0 |
| Default | 33 | 45 | 78 | 59 | 19 |
| Ethics Appeal | 31 | 75 | 106 | 78 | 28 |
| Fee Appeal | 18 | 108 | 126 | 104 | 22 |
| Motion for Final Discipline | 15 | 20 | 35 | 24 | 11 |
| Motion for Medical Examination | 0 | 1 | 1 | 1 | 0 |
| Motion for Reciprocal Discipline | 8 | 29 | 37 | 21 | 16 |
| Motion for Reconsideration | 0 | 1 | 1 | 1 | 0 |
| Motion for Temporary Suspension | 4 | 32 | 36 | 33 | 3 |
| Miscellaneous | 5 | 12 | 17 | 16 | 1 |
| Petition for Restoration | 1 | 17 | 18 | 17 | 1 |
| Presentment | 20 | 28 | 48 | 35 | 13 |
| <u>R. 1:20-6(c)(1)</u> | 1 | 3 | 4 | 2 | 2 |
| Stipulation | 5 | 10 | 15 | 13 | 2 |
| Totals | 155 | 456 | 611 | 473 | 138 |

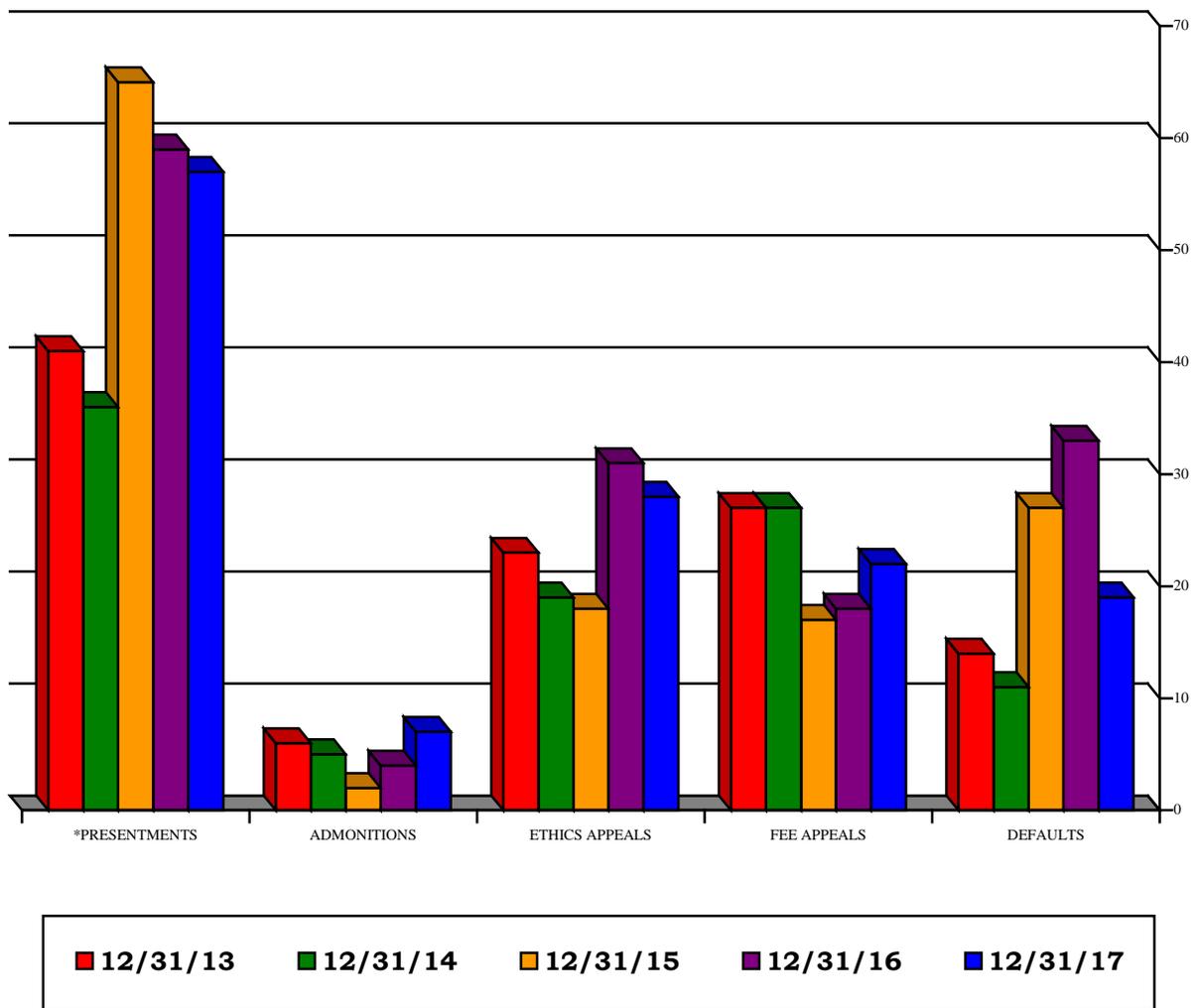
CASELOAD INFORMATION: FIGURE 2

| AGE OF PENDING CASES – BY CASE TYPE | | | | |
|--|-------------|-------------|--------------|----------------------|
| As of December 31, 2017 | | | | |
| Case Type | 2017 | 2016 | Prior | Total Pending |
| Admonition | 7 | 0 | 0 | 7 |
| Consent to Discipline | 7 | 0 | 0 | 7 |
| Default | 19 | 0 | 0 | 19 |
| Ethics Appeal | 28 | 0 | 0 | 28 |
| Fee Appeal | 22 | 0 | 0 | 22 |
| Motion for Final Discipline | 11 | 0 | 0 | 11 |
| Motion for Reciprocal Discipline | 16 | 0 | 0 | 16 |
| Motion for Temporary Suspension | 3 | 0 | 0 | 3 |
| Miscellaneous | 1 | 0 | 0 | 1 |
| Petition for Reinstatement | 1 | 0 | 0 | 1 |
| Presentment | 19 | 0 | 0 | 19 |
| <u>R. 1:20-6(c)(1)</u> | 2 | 0 | 0 | 2 |
| Stipulation | 2 | 0 | 0 | 2 |
| Totals | 138 | 0 | 0 | 138 |

CASELOAD INFORMATION: FIGURE 3

COMPARATIVE CASELOAD ANALYSIS

Pending from 12/31/2013 to 12/31/2017



*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 | | | | | |
|--------------------------------|----------------|-----------------|--------------|-----------------|-------------------------|
| 2013 - 2017 | | | | | |
| YEAR | CARRIED | DOCKETED | TOTAL | DISPOSED | DISPOSITION RATE |
| 2013 | 139 | 416 | 555 | 442 | 79.6% |
| 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% |

CASELOAD INFORMATION: FIGURE 5

| AVERAGE RESOLUTION TIMES FOR BOARD CASES (IN MONTHS) | | | | | | |
|---|---|------|------|------|------|--|
| <u>R. 1:20-8(c)</u> | | 2014 | 2015 | 2016 | 2017 | |
| Discipline: | | | | | | |
| Presentments | 6 | 5.8 | 6.6 | 8.7 | 6.6 | |
| MFD | 6 | 5.3 | 6.9 | 7.3 | 6.9 | |
| MRD | 6 | 5.4 | 6.6 | 8.6 | 6.4 | |
| Defaults | 6 | 4.9 | 5.8 | 7.5 | 6 | |
| Consents | 6 | 3.1 | 2.5 | 3.2 | 2.7 | |
| Stipulations | 6 | 4.8 | 7 | 7.4 | 5.9 | |
| <u>R. 1:20-6(c)(1)</u> | 6 | 6.2 | 4.3 | 8.5 | 6.9 | |
| Remands | 6 | - | 5.2 | - | - | |
| Admonitions: | | | | | | |
| Standard | 6 | 3.9 | 2.9 | 3.8 | 2.9 | |
| By Consent | 6 | 2.6 | 2.6 | 2.9 | 2.6 | |
| Appeals: | | | | | | |
| Ethics Appeals | 3 | 2.65 | 2.6 | 3 | 2.8 | |
| Fee Appeals | 3 | 3 | 3 | 3 | 2.9 | |
| Other: | | | | | | |
| MTS | - | 1 | .7 | .8 | 1 | |
| Petitions to Restore | - | 1 | 1.5 | 2 | 1.3 | |

BOARD ACTION

Discipline

In 2017, the Board rendered dispositions in forty-four presentments, thirteen stipulations, twenty-one motions for reciprocal discipline, and twenty-four motions for final discipline. The Board decided thirty-four motions by consent for the imposition of discipline greater than an admonition that were filed with the Board.

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

The Board reviewed eighteen admonition matters in 2017. Of these, three resulted in letters of admonition after review on the papers; eight were treated as presentments; two were dismissed; one was remanded, the Board decided to censure in two matters and reprimand in one matter.² In addition, the Board resolved one motion for imposition of admonition by consent which was granted.

The Board also reviewed and resolved thirty-three motions for temporary suspension, seventeen petitions for restoration, two R.1:20-6(c)(1) matters, and eighteen miscellaneous matters.

² Because cases that initially were docketed as admonitions were again docketed as "admonition to presentment" cases, they were counted in both categories to arrive at the total of eighteen admonition matters.

Appeals

The Board considered 182 appeals in 2017, ten more than in 2016. Of the seventy-eight ethics appeals reviewed in 2017, five cases (6.4%) were remanded by the Board to the district ethics committees for further action or for a new investigation. The 2017 percentage of remand on ethics appeals was lower than the 15.2% experienced in 2016.

The rate of remand for fee appeals was higher than for ethics appeals in 2017: of the 104 fee appeals reviewed, eighteen cases (17.3%) were remanded to the district fee arbitration committees, a rate lower than the 21.5% experienced in 2016. The reasons for fee remand varied: three were for due process concerns, five for a palpable mistake of law, four for a procedural error, five to correct the calculation of the fee arbitration determination, and one due to a committee member's failure to disqualify. One matter was vacated upon the Board's determination that the parties had settled the fee arbitration dispute.

SUPREME COURT ACTION

In 2017, the Office of Board Counsel transmitted to the Supreme Court a total of 136 formal decisions in presentments, stipulations, motions for final discipline, motions for reciprocal discipline, and default matters. In addition to those decisions, sixteen recommendations on petitions for reinstatement, twenty recommendations on motions for temporary suspension, and twenty-four determinations on motions for discipline by consent were sent to the Supreme Court.

Of the 136 formal decisions, the Supreme Court agreed with the Board's determination in 97.3% of the seventy-four cases for which it issued final orders in 2017. In two matters, the Supreme Court determined to impose a lesser degree of discipline. See Figure 6.

SUPREME COURT ACTION: FIGURE 6

2017 DISCIPLINE COMPARISON

| SUPREME COURT DISCIPLINE LESS THAN DRB DECISION | | |
|--|---|------------------------------------|
| ATTORNEY | DISCIPLINARY REVIEW BOARD DECISION | SUPREME COURT ACTION |
| Robert Davis | 3-year suspension (retroactive) | 1-year suspension (retroactive) |
| Nancy Oxfeld | 6-month suspension | 3-month suspension |

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 when an attorney fails to pay assessed costs, including automatic temporary suspension and entry of judgment. By the end of 2017, the Office of Board Counsel was current with cost assessment in every case in which the Supreme Court ordered costs to be paid. In 2017, the Supreme Court accepted consents to disbarment in fourteen 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 2017, the Office of Board Counsel assessed disciplined attorneys a total of \$595,509. In 2017, the Office of Board Counsel

collected \$334,847 which represented costs that were assessed in 2017 and prior years. This was \$122,674 more than the \$212,173 collected in 2016.

The Office of Board Counsel filed one motion for temporary suspension in 2017 against a respondent who failed to satisfy his cost obligation. The amount due from that respondent was \$3,000 and he satisfied the obligation in full as a result of the motion. Seventy-four judgments were filed in 2017 totaling \$217,640. Payments totaling \$29,334 were received toward these judgments, as well as judgments filed prior to 2017.

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 fourteen such sanctions in 2017, totaling \$7,000. Payments totaling \$1,000 were received to satisfy two of those sanctions.

CONCLUSION

During calendar year 2018, 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.