

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



**ANNUAL REPORT  
2019**

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

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

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June 30, 2020

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

I am pleased to submit to the Court the 2019 Annual Report of the Disciplinary Review Board. The Board concluded all matters pending from 2018. In 2019, the Board resolved 396 matters and transmitted to the Court 114 decisions in disciplinary cases.

In calendar year 2019, despite having docketed 472 cases, the most on record for a one-year period, the Board continued to submit well-written and well-reasoned decisions to the Court. Further, the Board asked the Court to consider imposing greater discipline on attorneys who engage in the purposeful, systematic, and unauthorized retention of excess real estate recording fees or engage in other deceptive, income-generating practices. In July 2019, the Court issued an Order cautioning attorneys that such conduct may result in the imposition of a higher level of discipline in the future. Also, the Office of Board Counsel upgraded and enhanced its electronic case management system, which will increase the efficiency of Board operations.

In April 2019, Peter Petrou, Esq., was appointed to serve on the Board. Mr. Petrou's biographical information is included in this report. Mr. Petrou was appointed following the expiration of the term of Chair Bonnie C. Frost, Esq., who served with distinction on the Board for thirteen years, as a member, vice-chair, and chair.

In addition, in 2019, the Office of Board Counsel collected \$400,389 in disciplinary costs assessed against attorneys.

Chief Justice and Associate Justices  
DRB 2019 Annual Report  
June 30, 2020  
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As in 2019, 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, stylized 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 2019, New Jersey attorneys admitted in their fifth to forty-ninth year of practice were assessed \$212 to fund various components of the disciplinary system. Attorneys in their

third and fourth years of practice were assessed \$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 2019 budget for the disciplinary system, as approved by the Supreme Court, allocated \$2,353,110 to cover salaries and benefits for Office of Board Counsel employees and an additional \$232,150 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 committee<sup>1</sup> 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

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<sup>1</sup> References to district ethics committees include the Committee on Attorney Advertising, 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 2019, the Board was chaired by Bruce W. Clark, Esq., and Hon. Maurice J. Gallipoli (Ret.), was Vice-Chair.

The Board's members in 2019 were:

### **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.

### **Vice-Chair, Hon. Maurice J. Gallipoli (Ret.)**

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.

**Peter J. Boyer, Esq.**

Mr. Boyer, of Cherry Hill, is a partner in the firm of Hyland Levin Shapiro 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.

**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, 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, after serving 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.

**Peter Petrou, Esq.**

Peter Petrou, of Parsippany, was appointed to the Board in April 2019, following previous appointments as a special ethics master, a member of the Unauthorized Practice of Law Committee and a member and former Chair of the District X Ethics Committee. Upon graduation from Duke Law School, where he was a member of the Duke Law Review, Mr. Petrou clerked for the Honorable Leo Yanoff. Mr. Petrou primarily practiced in the area of complex commercial litigation and commercial transactions. He also served as a court-appointed mediator and arbitrator for commercial disputes. His clients included many approved private schools for the developmentally disabled, leading to his current position as the Executive Director of ECLC of New Jersey, with administrative responsibility for its receiving schools, adult day programs and agency providing job placement, supported employment and support coordination services.

**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. Her practice focuses on commercial litigation, federal criminal defense, and appeals. Ms. Singer 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. 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 Supreme Court of New Jersey, 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 the 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 2019, the Office of Board Counsel comprised eight attorneys (Chief Counsel, two Deputy Counsels, 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 116 matters into January 2019, twenty-two fewer than it carried into 2018. See Figure 1. By December 31, 2019, all of those matters had been resolved. See Figure 2.

One hundred ninety-two matters were pending on December 31, 2019: thirty-eight (19.8%) presentments; thirteen (6.8%) stipulations; thirty-two (16.7%) defaults; nine (4.7%) admonitions; three (1.6%) motions for discipline by consent; eight (4.2%) motions for final discipline; seven (3.6%) motions for reciprocal discipline; seventy-two fee and ethics appeals (37.5%); one R. 1:20-6(c) matter (.5%), and nine miscellaneous matters (4.7%). See Figures 1 and 2. Figure 3 provides a graphic representation of the pending Board caseload at the close of 2019, compared to year-end pending caseloads for 2015 through 2018.

During calendar year 2019, the Office of Board Counsel docketed 472 matters for review by the Board, forty-four more than 2018. The number of ethics appeals increased substantially in 2019: 105 appeals were filed in 2019, while sixty-six were filed in 2018. The number of fee appeals filed in 2019 also increased: ninety fee appeals were docketed in 2019, compared to eighty-seven fee appeals docketed in 2018. Admonition filings increased: twenty-six were docketed in 2019, while eighteen were docketed in 2018.

In all, the Board resolved 396 of the 588 matters carried into or docketed during calendar year 2019 – a disposition rate of 67.3%. Figure 4 compares the Board's disposition rates from 2015 to 2019.



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 remained consistent with the time goals in 2019. Disposition times for other case types were significantly impacted by a core staff shortage, as well as the retirements of career attorneys, leading to vacancies of those positions, as well as replacements by attorneys having significantly less experience.

**CASELOAD INFORMATION: FIGURE 1**

| <b>DRB ANNUAL ACTIVITY REPORT</b>           |                |                 |              |                 |                |
|---|----------------|-----------------|--------------|-----------------|----------------|
| <b>JANUARY 1, 2019 TO DECEMBER 31, 2019</b> |                |                 |              |                 |                |
| <b>Case Type</b>                            | <b>Carried</b> | <b>Docketed</b> | <b>Total</b> | <b>Disposed</b> | <b>Pending</b> |
| Admonition/Presentment                      | 2              | 5               | 7            | 3               | 4              |
| Admonition                                  | 2              | 26              | 28           | 20              | 8              |
| Appeal/Presentment                          | 0              | 4               | 4            | 2               | 2              |
| Consent to Admonition                       | 1              | 1               | 2            | 1               | 1              |
| Consent to Discipline                       | 5              | 26              | 31           | 28              | 3              |
| Consent to Disbarment/Costs                 | 0              | 12              | 12           | 12              | 0              |
| Default                                     | 29             | 52              | 81           | 49              | 32             |
| Ethics Appeal                               | 16             | 105             | 121          | 76              | 45             |
| Fee Appeal                                  | 23             | 90              | 113          | 86              | 27             |
| Motion for Disability-Inactive              | 0              | 1               | 1            | 1               | 0              |
| Motion for Final Discipline                 | 7              | 12              | 19           | 11              | 8              |
| Motion for Reconsideration                  | 1              | 1               | 2            | 2               | 0              |
| Motion for Reciprocal Discipline            | 9              | 12              | 21           | 14              | 7              |
| Motion for Temporary Suspension             | 3              | 13              | 16           | 16              | 0              |
| Miscellaneous                               | 0              | 18              | 18           | 9               | 9              |
| Petition for Restoration                    | 1              | 12              | 13           | 13              | 0              |
| Presentment                                 | 15             | 56              | 71           | 39              | 32             |
| <u>R.</u> 1:20-6(c)(1)                      | 0              | 3               | 3            | 2               | 1              |
| Remand                                      | 0              | 1               | 1            | 1               | 0              |
| Stipulation                                 | 2              | 22              | 24           | 11              | 13             |
| <b>Totals</b>                               | <b>116</b>     | <b>472</b>      | <b>588</b>   | <b>396</b>      | <b>192</b>     |

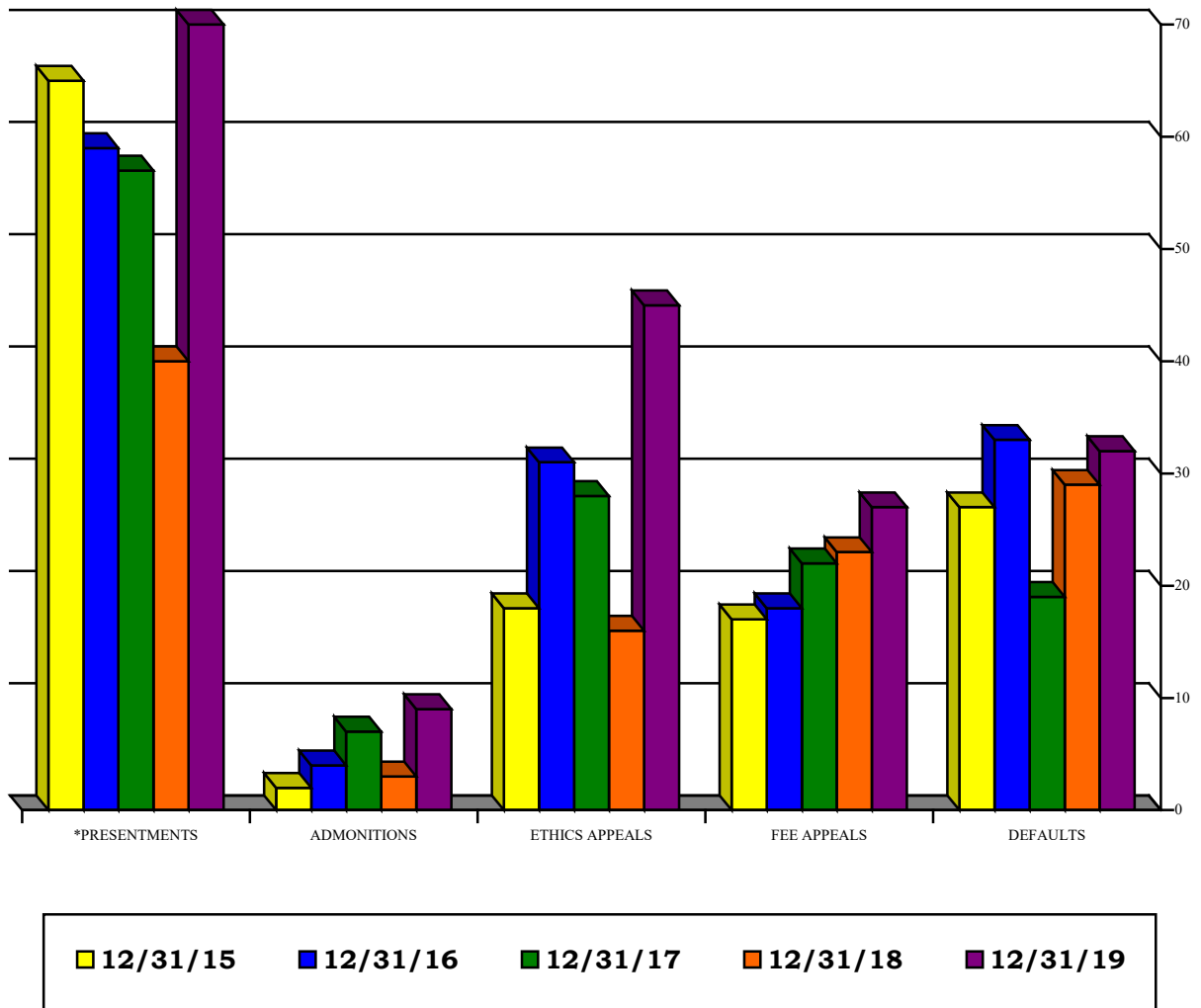
**CASELOAD INFORMATION: FIGURE 2**

| <b>AGE OF PENDING CASES – BY CASE TYPE</b> |             |             |              |                      |
|--|-------------|-------------|--------------|----------------------|
| <b>As of December 31, 2019</b>             |             |             |              |                      |
| <b>Case Type</b>                           | <b>2019</b> | <b>2018</b> | <b>Prior</b> | <b>Total Pending</b> |
| Admonition                                 | 9           | 0           | 0            | 9                    |
| Consent to Discipline                      | 3           | 0           | 0            | 3                    |
| Default                                    | 32          | 0           | 0            | 32                   |
| Ethics Appeal                              | 45          | 0           | 0            | 45                   |
| Fee Appeal                                 | 27          | 0           | 0            | 27                   |
| Motion for Final Discipline                | 8           | 0           | 0            | 8                    |
| Motion for Reciprocal Discipline           | 7           | 0           | 0            | 7                    |
| Miscellaneous                              | 9           | 0           | 0            | 9                    |
| Presentment                                | 38          | 0           | 0            | 38                   |
| <u>R. 1:20-6(c)(1)</u>                     | 1           | 0           | 0            | 1                    |
| Stipulation                                | 13          | 0           | 0            | 13                   |
| <b>Totals</b>                              | <b>192</b>  | <b>0</b>    | <b>0</b>     | <b>192</b>           |

**CASELOAD INFORMATION: FIGURE 3**

**COMPARATIVE CASELOAD ANALYSIS**

**Pending from 12/31/2015 to 12/31/2019**



\*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**

| <b>ANNUAL DISPOSITION RATE</b> |                |                 |              |                 |                         |
|--------------------------------|----------------|-----------------|--------------|-----------------|-------------------------|
| <b>2015 - 2019</b>             |                |                 |              |                 |                         |
| <b>YEAR</b>                    | <b>CARRIED</b> | <b>DOCKETED</b> | <b>TOTAL</b> | <b>DISPOSED</b> | <b>DISPOSITION RATE</b> |
| <b>2015</b>                    | 104            | 429             | 533          | 400             | <b>75%</b>              |
| <b>2016</b>                    | 133            | 443             | 576          | 424             | <b>73.6%</b>            |
| <b>2017</b>                    | 155            | 456             | 611          | 473             | <b>77.4%</b>            |
| <b>2018</b>                    | 138            | 428             | 566          | 451             | <b>80%</b>              |
| <b>2019</b>                    | 116            | 472             | 588          | 396             | <b>67.3%</b>            |

**CASELOAD INFORMATION: FIGURE 5**

| <b>AVERAGE RESOLUTION TIMES FOR BOARD CASES<br/>(IN MONTHS)</b> |   |      |      |      |      |  |
|---|---|------|------|------|------|--|
| <u>R. 1:20-8(c)</u>   |   | 2016 | 2017 | 2018 | 2019 |  |
| <b>Discipline:</b>  |   |      |      |      |      |  |
| Presentments  | 6 | 8.7  | 6.6  | 4.6  | 5.9  |  |
| MFD   | 6 | 7.3  | 6.9  | 5    | 7    |  |
| MRD   | 6 | 8.6  | 6.4  | 5.6  | 6.9  |  |
| Defaults  | 6 | 7.5  | 6    | 5.3  | 6.3  |  |
| Consents  | 6 | 3.2  | 2.7  | 3    | 3.2  |  |
| Stipulations  | 6 | 7.4  | 5.9  | 5.5  | 6    |  |
| <u>R. 1:20-6(c)(1)</u>  | 6 | 8.5  | 6.9  | 5.3  | 7    |  |
| Remands   | 6 | -    | -    | 2.7  | 2.8  |  |
| <b>Admonitions:</b>   |   |      |      |      |      |  |
| Standard  | 6 | 3.8  | 2.9  | 2.9  | 3.2  |  |
| By Consent  | 6 | 2.9  | 2.6  | 3    | 2.9  |  |
| <b>Appeals:</b>   |   |      |      |      |      |  |
| Ethics Appeals  | 3 | 3    | 2.8  | 3    | 3    |  |
| Fee Appeals   | 3 | 3    | 2.9  | 3.5  | 3.15 |  |
| <b>Other:</b>   |   |      |      |      |      |  |
| MTS   | - | .8   | 1    | 1.7  | 1.4  |  |
| Petitions to Restore  | - | 2    | 1.3  | 1.3  | 1    |  |

## **BOARD ACTION**

### **Discipline**

In 2019, the Board rendered dispositions in forty-four presentments, thirteen stipulations, fourteen motions for reciprocal discipline, and eleven motions for final discipline. The Board decided twenty-eight motions by consent for the imposition of discipline greater than an admonition.

Of the forty-nine defaults resolved by the Board, three were dismissed as moot due to the respondents' disbarment in other matters, two were administratively dismissed (one due to service deficiencies and one due to the attorney's application to the Supreme Court to be placed on disability-inactive status), and one was remanded to the Office of Attorney Ethics for further action after the Board granted the attorney's motion to vacate the default.

The Board reviewed twenty admonition matters in 2019. Of these, thirteen resulted in letters of admonition after review on the papers; five were treated as presentments; and two were dismissed. In addition, the Board resolved one motion for imposition of admonition by consent, which resulted in a letter of admonition.

The Board also reviewed and resolved sixteen motions for temporary suspension, thirteen petitions for reinstatement, two R.1:20-6(c)(1) matters, and nine miscellaneous matters.

## **Appeals**

The Board considered 195 appeals in 2019, thirty-one more than in 2018. Of the 105 ethics appeals reviewed in 2019, the Board remanded eleven cases (10.5%) to the district ethics committees for further action. The 2019 percentage of remand on ethics appeals was lower than the 15.4% experienced in 2018.

The rate of remand for fee appeals was slightly higher than for ethics appeals in 2019: of the ninety fee appeals reviewed, the Board remanded eleven cases (12.2%) to the district fee arbitration committees, a rate much lower than the 27.9% experienced in 2018. The reasons for fee remand varied: two were for due process concerns, six for palpable mistake of law, and three for procedural errors. In addition to these eleven remands, one appellant withdrew the appeal following the Board's determination that the Fee Arbitration Committee had assigned the matter to a new panel to conduct a new hearing. Lastly, in one matter the Board determined to reverse the determination of the Fee Arbitration Committee and vacated the determination in its entirety and dismissed the matter for lack of jurisdiction, pursuant to R. 1:20-A-2(a).



## **SUPREME COURT ACTION**

In 2019, the Office of Board Counsel transmitted to the Supreme Court 114 formal decisions in presentments, stipulations, motions for final discipline, motions for reciprocal discipline, and default matters. In addition to those decisions, thirteen recommendations on petitions for reinstatement, fifteen recommendations on motions for temporary suspension, and fourteen determinations on motions for discipline by consent were sent to the Supreme Court.

Of the 114 formal decisions, the Supreme Court agreed with the Board's determination in 90.4% of the fifty-two cases for which it issued final orders in 2019. In two matters, the Supreme Court determined to impose greater discipline. In three matters, the Supreme Court determined to impose a lesser degree of discipline. See Figure 6.

**SUPREME COURT ACTION: FIGURE 6**

**2019 DISCIPLINE COMPARISON**

| <b>SUPREME COURT DISCIPLINE GREATER THAN DRB DECISION</b> |   |                             |
|---|---|-----------------------------|
| <b>ATTORNEY</b>   | <b>DISCIPLINARY REVIEW BOARD DECISION</b> | <b>SUPREME COURT ACTION</b> |
| Daniel Fox  | Censure                                   | One-year suspension         |
| Rhashea Harmon  | Three-month suspension                    | Indeterminate suspension    |

| <b>SUPREME COURT DISCIPLINE LESS THAN DRB DECISION</b> |   |                             |
|--|---|-----------------------------|
| <b>ATTORNEY</b>  | <b>DISCIPLINARY REVIEW BOARD DECISION</b> | <b>SUPREME COURT ACTION</b> |
| Dwight Day   | Disbar                                    | Censure                     |
| Robert Plagmann  | Reprimand                                 | Dismiss                     |
| A Silverman  | Disbar                                    | Censure                     |

## **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 2019, the Office of Board Counsel was current with cost assessment in every case in which the Supreme Court ordered costs to be paid. In 2019, the Supreme Court accepted consents to disbarment in twelve 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 2019, the Office of Board Counsel assessed disciplined attorneys a total of \$454,118 and collected \$400,389 which

represented costs that were assessed in 2019 and prior years. This amount was \$69,765 more than the \$330,624 collected in 2018.

The Office of Board Counsel filed four motions for temporary suspension in 2019 against respondents who failed to satisfy cost obligations. The amount due from those respondents was \$9,651 and no payments were received. In 2019, 102 judgments were filed totaling \$201,716. Payments totaling \$11,356 were received toward these judgments. Payments made toward judgments that were filed in 2019 and prior years totaled \$115,170.

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 2019, totaling \$7,000. Payments totaling \$2,000 were received to satisfy four of those sanctions.

## **CONCLUSION**

During calendar year 2020, 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.