

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



**ANNUAL REPORT
2011**

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Disciplinary Review Board**

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DISCIPLINARY REVIEW BOARD
OF THE
SUPREME COURT OF NEW JERSEY

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June 28, 2012

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

I am pleased to submit to the Court the 2011 Annual Report of the Disciplinary Review Board. The Board concluded all matters pending from 2010. In 2011, the Board resolved 458 matters and transmitted to the Court 131 decisions in disciplinary cases.

In calendar year 2011, the Office of Board Counsel made significant advances in the use of technology to improve case processing and Board operations in general. An upgrade in our technology operation platform put us in position to interface with the new document management system being created for the Court. Soon the Office of Board Counsel will be electronically filing Board decisions and case files with the Court. With this new operation platform came greater capability and faster performance for staff doing legal research, creating reports, and searching internal case files. The addition of a DRB mailbox has provided better communication with, and service to, the public through email, providing the means to respond to requests for public documents and Board decisions free of the customary copying charge.

As in 2011, 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, reading "Julianne K. DeCore".

Julianne K. DeCore
Chief Counsel

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 2011, each New Jersey attorney admitted to practice between 1961 and 2007 was assessed a total of \$204 to pay for the disciplinary system. Attorneys admitted to practice in 2008 or 2009 were assessed a total of \$175, while attorneys in the first calendar year of admission were assessed \$35.

All Board members are volunteers; however, its staff is professional. The 2011 budget for the disciplinary system, as approved by the Supreme Court, allocated \$2,063,019 to cover salaries and benefits for Office of Board Counsel employees, and an additional \$245,050 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 advertisements 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.

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 enters default status after an attorney fails to timely 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.

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 submit an agreed-upon statement (stipulation) of the attorney's conduct and of the Rules of Professional Conduct violated thereby. The Board may accept the stipulation and impose the appropriate discipline by way of formal decision filed with the Supreme Court, or it may reject it and direct that the matter proceed to a hearing.

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 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 2011, the Board was chaired by Louis Pashman, Esq., and Bonnie C. Frost, Esq., was Vice-Chair.

The Board's members as of April 1, 2011 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 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, 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 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.

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 in April 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 master's 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 I Ethics Committee for four years before being appointed to the Disciplinary Review Board in 2008. In addition to serving as a public member of the Board, Ms. Doremus is a volunteer for several local organizations.

Hon. Reginald Stanton

Judge Stanton, of Morristown, was appointed to the Board in 2003 and retired from the Board on November 8, 2011. 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 retired from 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.

Morris Yamner, Esq.

Morris Yamner, a member of the New Jersey Bar since 1962, was appointed to the Board in May 2009. He is a partner at Sills Cummis and Gross, in Newark. He started his career as a judicial clerk and was then appointed a deputy attorney general. Thereafter, he practiced law in Paterson as a partner at what became Cole Yamner and Bray. He joined Sill Cummis and Gross in 1990.

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 served four years on the District IIIB Ethics Committee, becoming its designated public member.

OFFICE OF BOARD COUNSEL

The Office of Board Counsel functions as a clerk's office (case processing, docketing, 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 pursuing enforcement alternatives by filing judgments and seeking temporary suspensions for non-payment).

In 2011, 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 four secretaries.

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 118 matters into January 2011. See Figure 1. By December 31, 2011, all of those matters had been resolved. See Figure 2.

Of the 125 matters pending on December 31, 2011, fifteen (12%) were presentments; two (1.6%) were stipulations; nineteen (15.2%) were defaults; fifteen (12%) were admonitions; four (3.2%) were motions for discipline by consent; two (1.6%) were motions for final discipline; and one (.8%) was a motion for reciprocal discipline. Forty-eight percent of the total pending caseload consisted of sixty-one fee and ethics appeals. One petition for restoration and four miscellaneous matters made up the remainder. See Figures 1 and 2. Figure 3 provides a graphic representation of the pending Board caseload at the close of 2011, as compared to year-end pending caseloads for 2007 through 2010.

During calendar year 2011, the Office of Board Counsel docketed 465 matters for review by the Board, ten more than the 455 docketed in 2010. The number of ethics appeals increased in 2011: 113 appeals were filed in 2011, while 102 were filed in 2010. The number of fee appeals filed in 2011 decreased: 113 fee appeals were docketed in 2011, as compared to 135 fee appeals docketed in 2010. Admonition filings increased slightly: twenty-eight were docketed in 2011, and twenty-six were docketed in 2010.

In all, the Board resolved 458 of the total 583 matters carried into or docketed during calendar year 2011 – a disposition rate of 78.6%. Figure 4 compares the Board's disposition rates from 2007 to 2011.

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 requirement. See Figure 5.

Ethics and fee appeals processing times continued to show improvement in 2011 and were below the resolution time allotted by R.1:20-8(c). The disposition rate in all other categories was under the resolution time guidelines as well.

CASELOAD INFORMATION: FIGURE 1

DRB ANNUAL ACTIVITY REPORT JANUARY 1, 2011 TO DECEMBER 31, 2011					
Case Type	Carried	Docketed	Total	Disposed	Pending
Admonition/Presentment	2	5	7	5	2
Admonition	8	28	36	21	15
Consent to Admonition	1	5	6	5	1
Consent to Discipline	3	16	19	15	4
Consent to Disbarment/Costs	1	20	21	21	0
Default	16	65	81	62	19
Ethics Appeal	21	113	134	100	34
Fee Appeal	33	113	146	119	27
Motion for Final Discipline	5	8	13	11	2
Motion for Reciprocal Discipline	1	1	2	1	1
Motion for Temporary Suspension	0	22	22	22	0
Miscellaneous	2	8	10	6	4
Motion for Reconsideration	0	2	2	2	0
Petition for Restoration	3	7	10	9	1
Appeal/Presentment	0	1	1	0	1
Presentment	13	37	50	38	12
Stipulation	9	14	23	21	2
Totals	118	465	583	458	125

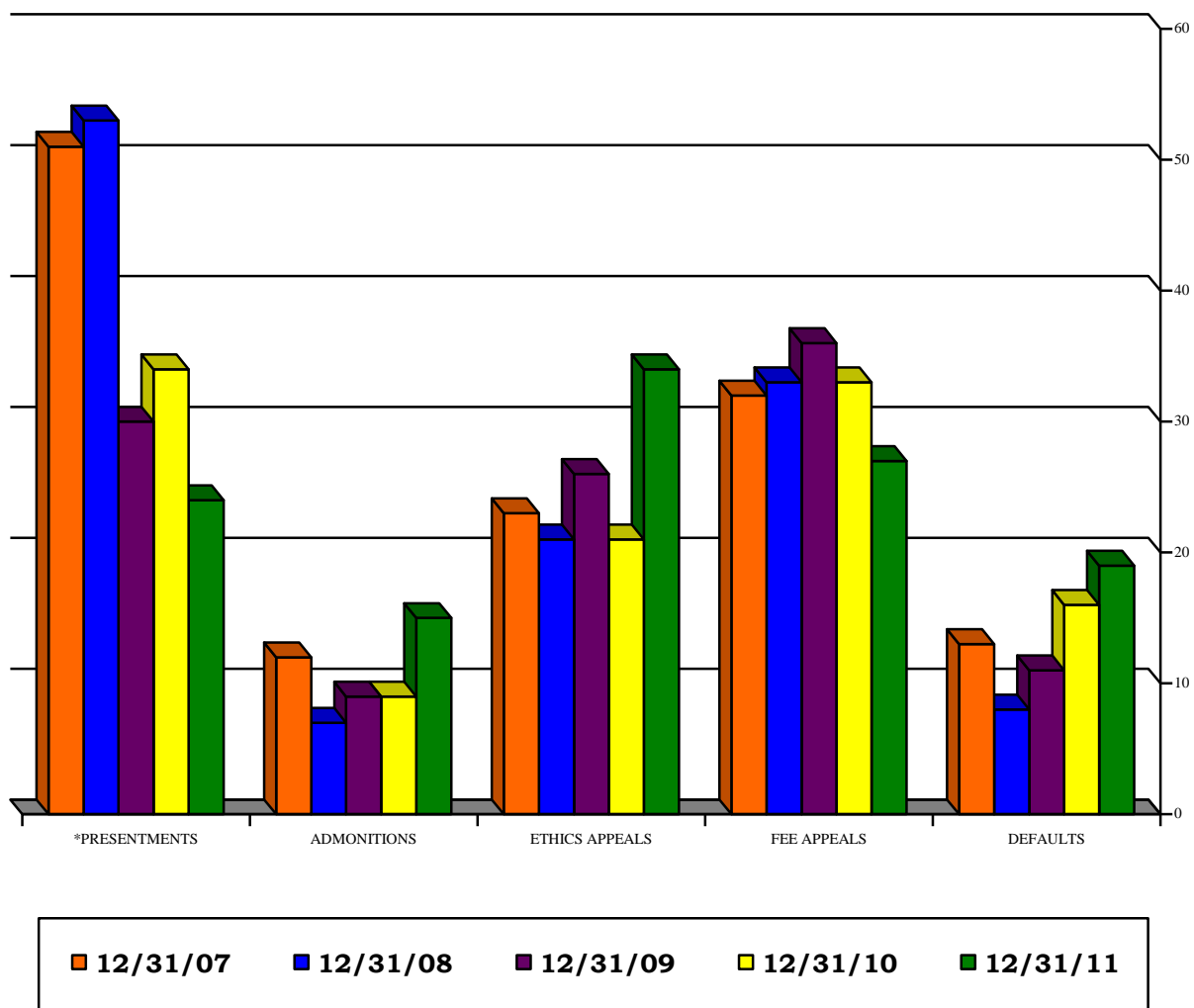
CASELOAD INFORMATION: FIGURE 2

AGE OF PENDING CASES – BY CASE TYPE As of December 31, 2011				
Case Type	2011	2010	Prior	Total Pending
Admonition/Presentment	2	0	0	2
Admonition	15	0	0	15
Consent to Discipline	5	0	0	5
Default	19	0	0	19
Ethics Appeal	34	0	0	34
Fee Appeal	27	0	0	27
Motion for Final Discipline	2	0	0	2
Motion for Reciprocal Discipline	1	0	0	1
Miscellaneous	4	0	0	4
Petition for Restoration	1	0	0	1
Appeal/Presentment	1	0	0	1
Presentment	12	0	0	12
Stipulation	2	0	0	2
Totals	125	0	0	125

CASELOAD INFORMATION: FIGURE 3

COMPARATIVE CASELOAD ANALYSIS

Pending from 12/31/2007 to 12/31/2011



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

CASELOAD INFORMATION: FIGURE 4

ANNUAL DISPOSITION RATE					
2007 – 2011					
YEAR	CARRIED	DOCKETED	TOTAL	DISPOSED	DISPOSITION RATE
2007	82	418	500	366	73%
2008	134	450	584	455	78%
2009	130	416	546	427	78%
2010	119	455	574	456	79.4%
2011	118	465	583	458	78.6%

CASELOAD INFORMATION: FIGURE 5

AVERAGE RESOLUTION TIMES FOR BOARD CASES (IN MONTHS)						
<u>R.</u> 1:20-8(c)			2008	2009	2010	2011
Discipline:						
Presentments	6		6.6	5.46	4.6	5.6
MFD	6		6	6.8	4.5	4.9
MRD	6		6.2	6.2	5	6
Defaults	6		4.8	4.2	4.1	4.9
Consents	6		4.7	4.25	2.8	3.6
Stipulations	6		5.2	5.3	4.4	5
Admonitions:						
Standard	6		4.3	3.9	3.1	3.9
By Consent	6		4.6	4.1	2.6	2.7
Appeals:						
Ethics Appeals	3		3.2	2.3	2.75	2.6
Fee Appeals	3		3.6	3.6	3.35	2.85
Other:						
MTS	-		1.6	1.2	1	.9
Petitions to Restore	-		1.2	1.1	1.9	1.7

BOARD ACTION

Discipline

In 2011, the Board rendered dispositions in forty-three presentments, twenty-one stipulations, one motion for reciprocal discipline, eleven motions for final discipline, and fifteen motions for the imposition of discipline, greater than an admonition, by consent.

Of the sixty-two defaults resolved by the Board, twelve were vacated and remanded to the district ethics committees, and six were administratively dismissed after receipt of Supreme Court orders for disbarment or because of due process problems.

The Board reviewed twenty-one admonition matters in 2011. Of these, thirteen resulted in letters of admonition after review on the papers; one was returned to the OAE to be treated as a diversion; one was forwarded to the Supreme Court with a recommendation that respondent receive a reprimand; and one was dismissed. Five of the admonitions reviewed were scheduled for oral argument as presentments. The Board resolved five motions for imposition of admonition by consent: two were granted, one was denied, one was dismissed, and one was withdrawn.

The Board also reviewed and resolved twenty-two motions for temporary suspension, nine petitions for restoration, and two motions for reconsideration.

Appeals

The Board considered 219 appeals in 2011, twenty-six less than in 2010. Of the 100 ethics appeals reviewed in 2011, thirteen cases (13%) were remanded by the Board to the district ethics committees for further action. The 2011 percentage of remand on ethics appeals was significantly higher than the 8.4% experienced in 2010.

The rate of remand for fee appeals was higher than for ethics appeals in 2011: of the 119 fee appeals reviewed, eighteen cases (15%) were remanded to the district fee arbitration committees, a rate lower than the 23.2% experienced in 2010. Although the reasons for fee remand varied, the majority resulted from palpable mistake of law at the district level, and lack of adequate notice of the hearing.

SUPREME COURT ACTION

In 2011, the Office of Board Counsel transmitted a total of 139 matters to the Supreme Court. Of those, 131 decisions were in presentments, stipulations, admonition-presentments, motions to impose discipline by consent, motions for final discipline, motions for reciprocal discipline, defaults, and R. 1:20-6(c)(1) matters. Eight matters were petitions for reinstatement.

Of those decisions, the Supreme Court agreed with the Board's determination in 93.4% of the cases for which it issued final orders in 2011. In four 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 one matter, the Supreme Court imposed discipline greater than did the Board; the Supreme Court imposed a lesser degree of discipline in three matters.

SUPREME COURT ACTION: FIGURE 6

2011 DISCIPLINE COMPARISON

SUPREME COURT DISCIPLINE GREATER THAN DRB DECISION		
ATTORNEY	DISCIPLINARY REVIEW BOARD DECISION	SUPREME COURT ACTION
Thomas Hood	Reprimand	Censure

SUPREME COURT DISCIPLINE LESS THAN DRB DECISION		
ATTORNEY	DISCIPLINARY REVIEW BOARD DECISION	SUPREME COURT ACTION
Michael Etkin	6 month suspension	3 month suspension
Philip Prothro	3 month suspension	Censure
A. Steig	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 1995 adoption of R. 1:20-17, 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 2011, the Office of Board Counsel was current with cost assessment in every case where assessment was Supreme Court ordered. In 2011, the Supreme Court accepted consents to disbarment in thirteen 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 2011, the Office of Board Counsel assessed disciplined attorneys a total of \$317,127. In 2011, the Office of Board Counsel collected \$233,975, which represented costs that were assessed in 2011 and prior years. This was \$55,706 less than the amount collected in 2010 (\$289,681).

The Office of Board Counsel filed seventeen motions for temporary suspension in 2011 against respondents who failed to satisfy their cost obligations. The amount due from those respondents was \$44,628.76 and a total of \$33,273.28 was collected as a result of the motions. Twenty-nine judgments were filed in 2011 totaling \$70,145.82. Payments totaling \$3,221.32 were received on those judgments.

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 eight such sanctions in 2011 totaling \$3,500 of which \$2,250 was paid.

CONCLUSION

During calendar year 2012, 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.