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DISCIPLINARY OVERSIGHT COMMITTEE

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September 28, 2015

The Honorable Chief Justice Stuart J. Rabner and
Associate Justices of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625

Re: 2016 Attorney Disciplinary Budget

Dear Chief Justice Rabner and Associate Justices:

The Supreme Court's Disciplinary Oversight Committee (DOC or Committee) considered and unanimously approved the proposed FY 2016 Attorney Disciplinary Budget, pursuant to R. 1:20B-4(a)(2). The budget was prepared in consultation with the Administrative Office of the Court's Office of Management and Administrative Services (OMAS). The Committee thanks Charles Centinaro, Esq., Director of the Office of Attorney Ethics (OAE); Susan Fleming, OAE Administrator; Ellen Brodsky, Esq., Chief Counsel of the Disciplinary Review Board (DRB); and the staffs of the OAE and DRB for their efforts in preparing the proposed budget in a professional and timely manner. The Committee also thanks OMAS Director Shelley Webster and Assistant Chief Linda McAdams for their assistance during the budget process. Finally, the DOC acknowledges the expertise of its Budget Subcommittee and commends it for its work and diligent efforts.[1]

This Budget Report reflects the Committee's careful analysis and recommendations. The Committee requests the Court's review and approval for publication of this report and the 2016 Disciplinary Budget Overview. Budget reserve projections through 2018 are also enclosed for the Court's consideration.

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[1] The Budget Subcommittee members are Co-Chair Maureen Kerns, Esq., Co-Chair Richard Sackin, CPA, Mike Furey, Esq., Paris Eliades, Esq., Joel Rosen, Esq., and Spencer Wissinger, III, CPA.

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed budget for 2016 is $12,974,963, representing a .4% increase from the budget approved for 2015. As discussed in greater detail below (Section II(A)) the primary core expense is salaries and benefits, approximately 80% of the budget. Salaries are expected to increase by .41% ($29,732) over projected figures for 2015. Due in part to an increase in the Fringe Benefit Rate (FBR), from 41.7% to 44.25%, overall personnel costs for 2016 are expected to increase by 1.29% when compared to the latest estimate for 2015. Total operating expenses are expected to rise by 1.9% over the latest estimate for 2015.

As discussed in Section III, the DOC is recommending that the fee assessment for 2016 remain the same as in 2015, $148 for plenary admitted attorneys practicing 3-49 years. As explained in Section IV, a $148 registration fee is projected to generate revenues of $10,286,000.[2] Attorneys practicing 2 years or less pay $25, yielding another $82,500. Thus, total revenues from plenary admitted attorney registration fees are anticipated to be $10,368,500. When other fees are added ($2,253,200), total projected revenues for 2016 are estimated to be $12,621,700. Thus, revenues from registration fees and other sources are expected to increase by approximately 1% ($141,160) when compared to the latest estimate for 2015.

With total projected revenues of $12,621,700 and total expenses of $12,974,963, there will be a budgeted deficit for 2016 of $353,263. There was a budgeted deficit of $517,168 in 2015, but the latest estimate for 2015 shows a deficit of $315,513. At the end of 2015, the reserve is projected to be $2,976,781 or 23.3% of the budget. The projected reserve at the end of 2016 is $2,623,518 or 20.2% of the operating budget. Budget reserves for 2017 and 2018 are projected to be 15.3% and 10%, respectively. Thus, depending on the accuracy of current projections, in the next couple of years, the DOC anticipates meeting its goal of generating a 10% reserve by December 31, 2018. (please see Section III below for further discussion on the annual assessment and reserve projections).

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2 The fee discussed in this Report is for the disciplinary system only. Additional sums are added to this fee for the Lawyers' Fund for Client Protection, the Lawyers Assistance Program, and the Mandatory Continuing Legal Education Program.

The DOC believes that the proposed budget for 2016 is fiscally responsible and will provide the OAE and DRB with the resources needed to continue their high level of service.

II. Expenses.

A. Salaries and Benefits.

The Department of the Treasury, Office of Management and Budget (OMB), has advised that there will be an increase in the fringe benefit rate between FY 2015 (41.7%) and FY 2016 (44.25% projected rate). Based on available information, salaries for 2016 are projected to cost $7,212,486 (.41% increase)[3] and benefits are projected to cost $3,184,460 (a 3.32% increase from the latest estimate for 2015). Thus salaries and benefits for 2016 are projected to be $10,396,946 (86 full time positions) or approximately 80% of the budget.[4] This budgeted number assumes a 3.5% vacancy factor. Since 2005, except for 2012,[5] the vacancy rate has been budgeted at 2%. However, the actual vacancy rate has been averaging closer to 3.5%. The DOC believes that 3.5% is a more realistic vacancy rate for 2016.

B. Notable Expenses.

1. Technology/Data Processing. On December 4, 2013, the OAE and DRB presented an *IT Strategic Plan - 2014 to 2017* to the DOC. The plan described the costs, benefits and timing of ongoing improvements and potential IT initiatives over several years. Implementation of the plan continued in 2014 and 2015, including the employment of document management and digital evidence processing tools and significant progress towards the implementation of Electronic Filing ("e-Filing") for District Ethics and Fee Arbitration Committees and the public. Public access to practice and disciplinary information on attorneys will also be provided later this year through the Attorney Ethics Searchable Online Portal ("AESOP") and a mobility project aimed at tablet computers in the field is scheduled for completion in 2016. In addition, the OAE will continue to make improvements to its InfoShare Case Management System ("CMS") in its effort to keep pace with recent trends in the discovery and preservation of Electronically Stored Information ("ESI").

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3 Salaries for represented staff in the disciplinary system are established through negotiated labor contracts. These contracts were recently renegotiated and ratified.

4 Salaries and benefits have historically constituted approximately 80% of the budget.

5 In 2012, because of an unusual number of planned retirements, the vacancy rate was budgeted at 5%.

These and other technology and data processing initiatives described in the budget narrative will ensure that the disciplinary system keeps pace with technological advances. These advances will make the process both more accessible and transparent and provide the means to reduce case processing time while securing sensitive information and work-product in a cost-effective manner. The total OAE/DRB data processing budget for 2016 is $343,875, about $25,000 less than the amount budgeted for 2015.

2. Equipment. The OAE and DRB annually replace personal computers, depending on age and condition, in accordance with Judiciary standards. This practice allows the disciplinary system to remain current with changing technical requirements while spreading the costs over a multi-year period. Due to a number of issues, the OAE did not replace any personal computers in 2012 and purchases in 2013 were limited. As part of the OAE's effort to keep costs down, only one-fifth (as opposed to the usual one-fourth) of the personal computers and printers were replaced in 2014, resulting in a large number of "antiquated" devices in need of replacement. In 2015, the OAE again implemented the 25% replacement schedule. To close any remaining gap in this area, the OAE is requesting an additional $5,000 above the latest estimate for 2015.

The 2015 budget included funds for the purchase of two additional vehicles for the two new auditors who have been added to the OAE's Random Audit Program. One vehicle has been purchased and the other is on order. In addition, each year the OAE retires one of its fleet vehicles, replacing it with a new vehicle. The total equipment cost for 2016 is projected to decrease from $116,000 (2015 latest estimate) to $95,000 or by 18%.

3. Contingencies. In recent years, the OAE has received an increasing number of requests for reimbursement of expenses from those who have been asked by a court to wind up the practice of an attorney who has died or been disciplined. Because these persons, usually attorneys, have a legitimate right to at least partial reimbursement of those expenses, the OAE, with the DOC's support, believe it is prudent to budget for these potential claims and have increased the contingency allocation by $5,000.

III. The Annual Assessment and the Reserve.

In 2012, the DOC addressed the fact that the reserve had been increasing steadily since 2009 when the annual assessment was increased from $126 to $140, and it recommended that the Court reduce the annual assessment to $135 for the 2012 budget year.

The reserves have generally been declining since then, although not as quickly as the Committee had anticipated. That said, since 2011 reserves have dropped by 31.6%. In 2015 the reserves should drop to $2,976,781 or 23.3% of the budget. In 2016 with a registration fee of $148, we are projecting a further reduction of the reserves to $2,623,518 or 20.2% of the budget. It is estimated that should the registration fee remain the same in 2017, the reserve will decrease to 15.3%. The DOC further projects that the reserves will drop to approximately 10% as of December 31, 2018 if the registration fee is set at $151.

As is the case every year, New Jersey's annual assessment is reasonable in relation to other states. Comparing the eighteen "voluntary" states, which do not require mandatory bar association membership or impose malpractice insurance fees, and ranking them from the most expensive to the least expensive, New Jersey's fee ranks 10th lowest.[6] It should be further noted that of those states with lower registration fees, only one state regulates more attorneys than New Jersey.

IV. Revenue Projections.

Based on an annual assessment of $148, the total revenue projected for 2016 is $12,621,700. This is a 1% increase ($141,160) from the latest estimate for 2015. For 2016, it is estimated that 69,500 attorneys practicing between three and 50 years will pay the fee, 1,000 more than in 2015. It is expected that 3,300 attorneys who have been practicing law two years or less will pay the $25 fee, 100 more than 2015. Total receipts from plenary admitted attorneys paying the registration fee are projected to be $10,368,500, or 82% of revenue.

Pro hac vice fees are estimated to be paid by 7,000 attorneys in 2016, generating $1,036,000 or approximately 8.2% of all revenue. Approximately 1,350 attorneys are projected to pay for in-house counsel licenses in 2016, generating $199,800 in revenue. Other significant sources of revenue include late fees for attorneys who fail to register in a timely manner ($320,000), prior year assessments that attorneys failed to pay ($275,000), and the recovery of the costs of disciplinary investigations and proceedings from disciplined attorneys ($250,000).

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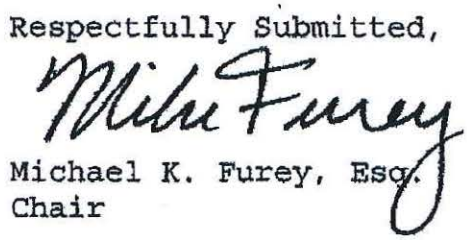
6 The average annual fee nationwide is $321, compared to only $212 in New Jersey. This fee includes other assessments as noted in footnote 3.

V. Conclusion.

The DOC has reviewed and discussed each category of the proposed 2016 budget, and it believes that maintaining the annual assessment at $148 promotes fiscal responsibility while ensuring a high level of services to the public and the bar.[7] As is the case with all budgets, the Attorney Disciplinary Budget does not entirely capture the fine work of the OAE, DRB, and volunteers, as they strive to promote confidence in the profession, the disciplinary system, and the judiciary as whole.

The DOC respectfully requests that the Court permit the publication of this Budget Report and the Budget Overview. The DOC recommends that, following the comment period, the Court approve the 2016 Attorney Disciplinary Budget.

Respectfully Submitted,



Michael K. Furey, Esq.
Chair

MKF/et
Enclosures

cc: Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the
Administrative Office of the Courts (AOC)
Steven Bonville, Esq., Chief of Staff, AOC
Mark Neary, Esq., Clerk, Supreme Court
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Linda McAdams, Ass't Chief, Mgmt. & Admin. Svcs.
Ellen Brodsky, Esq., Chief Counsel, DRB
Charles Centinaro, Esq., Director, OAE
Isabel McGinty, Esq., Statewide Ethics Coordinator, OAE
Susan Fleming, Office Administrator, OAE

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7 Overall, the discipline fee in 2015 costs just $23 more than it did twenty years ago in 1995.

1.1 2016 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:				
Practicing 3 - 49 years (@ $148)		$ 10,286,000		
Practicing 2 years (@ $25)		82,500		
Total Registration Fees			$ 10,368,500	
Other Fees				
Prior Year Payments		275,000		
Fee Arbitration Filing Fees		70,000		
Interest on Funds		10,000		
Disciplinary Costs Recovered		250,000		
In-House Counsel		199,800		
Pro Hac Vice Fees		1,036,000		
Multi-Jurisdictional Practice		25,900		
Reinstatement Fees		65,000		
Late Fees		320,000		
Other Revenue		1,500		
Total Other Fees			$ 2,253,200	
Total Projected **Revenues** 2016			$ 12,621,700	

EXPENSES:

Salaries & Benefits:				
Salaries at 96.5%		$ 7,212,486		
(Allows for 3.5% vacancy rate)				
Fringe Benefits at 44.25%		$ 3,184,460		
Total Salaries & Benefits			$ 10,396,946	
Operating Expenses:				
OFFICE EXPENSE		675,803		
HEARING FEES		142,000		
OTHER EXPENSES		160,075		
MAINTENANCE & FIXED EXPENSES		382,938		
SPECIAL PURPOSE		1,122,201		
Emoluments	539,500			
Contingencies	7,500			
Attorney Registration Costs	575,201			
EQUIPMENT		95,000		
Total Operating Expenses			$ 2,578,017	
Total Projected **Expenses** 2016			$ 12,974,963	
Revenues Less Expenses 2016				$ (353,263)
ADD: Reserve, End of 2015				$ 2,976,781
Reserve, End of 2016				$ 2,623,517
				20.2%