

NOTICE TO THE BAR

Re: Proposed 2009 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2009 Attorney Discipline Budget has been submitted to the Supreme Court for action. The Court has directed that the Report and an Overview of the proposed 2009 Attorney Discipline Budget be published for comment.

Those seeking to comment should do so in writing by November 15, 2008, as follows:

Via mail:

Clerk of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Via electronic mail:

Comments.mailbox@judiciary.state.nj.us

Stephen W. Townsend, Esq.
Clerk of the Supreme Court

Dated: October 7, 2008

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY OVERSIGHT COMMITTEE**

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MICHAEL K. FUREY, ESQ., VICE CHAIR
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October 1, 2008

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: 2009 Attorney Discipline Budget

Dear Chief Justice Rabner and Associate Justices:

The Supreme Court's Disciplinary Oversight Committee (DOC), in consultation with the Administrative Office of the Court's Office of Management and Administrative Services, has reviewed the proposed attorney disciplinary budget for the calendar year 2009, which was jointly prepared and submitted by the Disciplinary Review Board (DRB) and Office of Attorney Ethics (OAE). The Committee would like to thank Julianne DeCore, Esq., Chief Counsel of the DRB, David E. Johnson, Jr., Esq., Director of the OAE, and their staffs for their diligence in preparing the proposed budget. The hard work of the Budget Subcommittee of the DOC is also appreciated, which was skillfully led by Co-Chairmen Anthony Guacci and Raymond Ocasio, two lay members.

The Committee considered and approved the proposed budget at its meeting on September 17, 2008. This letter constitutes the Committee's recommendations with respect to the proposed budget. The Committee requests the Court's review and approval to publish this letter with an overview of the proposed budget, which appears on page two of the budget and is usually published in lieu of the entire budget document. We also enclose for the Court's consideration the Budget Reserve Projections through 2013.

I. Overview.

The total proposed budget for 2009 is \$11,215,008. This represents an overall increase of approximately 4% over the budget that was approved for 2008. Revenues in 2009 are projected to be \$10,601,810, and expenses to be \$11,215,008. The shortfall will be offset by a reduction in the reserve from its latest estimated total of \$1,209,388 to \$596,190. The contributions from the reserve will comprise approximately 5.4% of the total proposed budget, and will bring the reserve in line with the policy of maintaining a reserve of 5% of the overall budget.

New Jersey's disciplinary system is unique in that it utilizes both a professional staff and many volunteers, both attorneys and public members. These volunteers help to maintain the high standards of professional conduct for attorneys. Their dedication of time and expertise helps defray the costs of the attorney disciplinary system. Nevertheless, the goal of spending down the substantial reserves of past years to avoid raising the disciplinary portion of the annual fee largely has been accomplished. Furthermore, based on projections for 2008, revenues have not been as robust as in prior years. For 2008, revenues are projected to be approximately 4%, or \$400,000, lower than those earned in 2007. In order to maintain the reserve at 5% for 2009, a \$14 increase in the disciplinary portion of the annual fee is required. The 2009 budget, therefore, reflects a proposed increase in the annual fee from \$126 to \$140.

A. Expenses.

In recent years, salary and fringe benefits have constituted 80% of the proposed disciplinary budget and that pattern continues for 2009. Although the Office of Attorney Ethics and the Disciplinary Review Board have made every effort to control costs, payroll and benefit rates are established through a negotiated labor contract over which the OAE and DRB have no control. Under the negotiated-but-not-yet-signed labor contract for the period July 1, 2008 to June 30, 2009, salaries are projected to increase over the latest estimate for 2008 by approximately \$119,000, an increase of less than 2%, for a total of \$6,613,143. The cost of fringe benefits is anticipated by the Treasury Department to increase from 32% to 35%, totaling \$2,320,013. For 2009, salaries and fringe benefits are projected to cost \$8,933,156, or 80% of the total budgeted expenses.

The 2009 budget incorporates a 2% staff-vacancy rate, which was also the case in 2008. Salaries and benefits, therefore, are budgeted at an effective rate of 98% for the full year, which reflects the normal staff turnover and the time it takes to fill

any vacancies. It is important to note, however, that the State's buy-out resulted in several high-level retirements of OAE staff, including David Johnson, Esq., Director of the OAE, who will retire on February 1, 2009. Most of these positions, including that of the Director, will be filled during 2009, but the timing and salary were not known at the time this budget was prepared. For that reason, the projected salary and benefit figures may be less certain than in prior years.

The remaining \$2,281,853 of the \$11,215,008 budget, or 20%, comprises operating expenses. The largest line-items under operating expenses include: fee/ethics secretarial emoluments of \$539,500 (5% of the total proposed budget), attorney registration costs of \$460,000 (4% of the total budget) and office rental at \$337,188 (3% of the total budget). A \$75,000 addition to the contingency line item was incorporated into the 2009 budget at the request of the DOC. This new expense, discussed in Section III, anticipates that the next Director of the OAE may bring new ideas for changes in procedures that would benefit the system. Such changes are likely to require funding to implement.

B. Revenue.

Total revenue projected for 2009 is \$10,601,810. This is an increase of 12% over the revenue that is projected for 2008, or \$9,470,600. However, this increase is due solely to the recommended increase in the discipline portion of the annual attorney registration fee, which is the primary source of revenue for the attorney disciplinary system. For 2009, it is estimated that 60,000 attorneys will pay the fee imposed on attorneys practicing between three and 50 years--an increase of 1,000 attorneys over the latest estimate for 2008. It is expected that 2,500 attorneys will pay the fee of \$25 for practicing two years or fewer, level with the number who paid this amount in 2008. Receipts from the discipline portion of the registration fee are projected to be \$8,462,500, or 80% of revenues. Late fees, which are charged to attorneys who do not pay the annual fee by the due date, are projected to bring in revenue in the amount of \$280,000, or 3% of total projected revenues.

Pro hac vice fees are projected at \$868,000 for 2009, 8% of the total projected revenues. After a significant increase in the number of out-of-state attorneys being admitted *pro hac vice* between 2002 (2,794 attorneys) and 2006 (6,167 attorneys), these admissions have leveled off, with approximately 6,400 attorneys paying the fee in 2007 and, as projected, 6,200 in 2008. For this proposed budget, we estimate that the number of attorneys seeking admission *pro hac vice* will remain at 6,200.

According to the latest projections, 1,100 attorneys paid the \$126 fee to be licensed as in-house counsel in 2008, generating \$138,600 in revenue. This budget projects revenue in the amount of \$161,000 from 1,150 in-house counsel for 2009.

Additional sources of revenue include interest on funds, which in 2008 experienced a significant reduction over prior years due to interest rates dropping. Last year, the 2008 budget projected revenues from interest at \$280,000. The latest estimate for 2008 predicts revenues of \$115,000 this year, or 41% of the amount that had been budgeted. The calculation used for interest income in 2009 is 2%, applied to the estimated reserve totals for the twelve month period, or \$125,560.

II. Registration Fee/Reserves.

As discussed above, under the proposed 2009 budget, the disciplinary portion of the registration fee for attorneys admitted between three and 50 years will increase 11% from \$126 to \$140. Attorneys admitted for only two years will continue to pay \$25. Inflation in salaries, benefits and other expenses is expected to result in annual increases in the registration fee to a high of \$178 by 2013. Last year's budget projected a fee increase for 2009 to \$153, with incremental annual increases to \$178 by 2012. Recognizing the difficulties that our current economy is creating for many attorneys, the proposed 2009 budget reflects a substantial effort to reduce the increase that had been anticipated in last year's budget for 2009.

Since the 2003 budget, when the DOC recommended a "pay-as-you-go" approach to the disciplinary system budget, the annual attorney registration fee has been based on the actual costs of administering the attorney disciplinary system on a year-to-year basis with a zero-based budget. This approach requires a careful analysis of the interplay between the reserve amount and the amount charged for the discipline portion of the attorney registration fee.

The projected increase in the annual fee for 2009 was driven by two factors affecting the reserves. First, a 50% reduction in the reserves occurred between 2007 and 2008, which dropped from \$2,446,304 at the end of 2007 to a projected \$1,209,388 by the end of 2008. Under the proposed budget for 2009, the reserves will continue to be drawn down to the targeted 5% of budget. Second, interest income for the reserves and revenues received during the year are anticipated at 2% for 2009. This is a significant reduction over prior years. In 2007, interest rates ranged from a high of 4.75% to a low of 4%.

These factors, combined with the increase in expenses described in Section I, are driving the increase in the disciplinary portion of the annual fee. The increase from \$126 to \$140, however, is still reasonable. The disciplinary portion of the annual fee was set at \$125 in 1995. With the increase in 2009, the fee will cost just \$15 more than it did fourteen years earlier. Moreover, the attached survey, compiled by the OAE in 2008, compares New Jersey's current annual fees, totaling \$186,¹ against other jurisdictions after normalizing the numbers by subtracting taxes and charges such as mandatory malpractice insurance fees imposed by some states. The "normalized" survey reveals that New Jersey currently ranks 42nd out of 51 jurisdictions in the amount of mandatory fees. Fees for other jurisdictions range from a high of \$540 in New Hampshire to a low of \$110 in Connecticut. In short, the fees charged to practice law in New Jersey are still a bargain, even with the proposed increase.

III. New Budget Initiatives.

Two new expenses are proposed with this budget.

A. Computer refrigeration room.

The OAE advises that the original fan ventilation system in its computer room is no longer sufficient to maintain a proper operating temperature for the servers, power supplies, networking devices, and telecommunication equipment housed in the room. These devices, when not operating within normal temperatures, are more prone to sudden failure, data loss and network crashes. The OAE proposes to correct this situation by installing a supplemental air-conditioning unit, to be purchased from a state-contracted vendor, that will maintain the room at a normal operating temperature at all times. The cost to purchase and install the air conditioning unit and to install a dedicated power circuit is estimated at \$27,000. The OAE is required by its lease to use the landlord's vendor for installation, which will include running the air conditioning exhaust up several floors and to the exterior of the building.

B. Contingency Line Item.

At the request of the DOC, the 2009 budget includes a contingency line item in the amount of \$75,000 to permit the OAE's

¹ \$126 for the attorney disciplinary system, \$50 for the Lawyers' Fund for Client Protection, and \$10 for the New Jersey Lawyers' Assistance Program.

new leadership to retain a consultant to evaluate procedures and make recommendations, and/or implement changes that he or she believes will increase efficiency. Before any such changes could be implemented or consultants retained, approval would need to be sought from the DOC. However, providing a limited amount of funding in the 2009 budget should permit any changes that the DOC finds meritorious to be implemented quickly.

Conclusion

The DOC has reviewed and discussed each category of the proposed budget and believes that it represents a balanced approach to fiscal responsibility. Both the OAE and DRB have instituted effective cost controls and continually seek to produce the vital work of the disciplinary system at or below budget. The changes in leadership within the OAE, as well as other variables, may result in costs or savings that are difficult to project. The Committee will continue its regular review and will inform the Court of any developments.

The Committee is pleased to present this budget to the Court and applauds the efforts and dedication of the professionals and volunteers serving the disciplinary system. The Committee respectfully recommends that the Court approve the 2009 Attorney Discipline Budget, as proposed.

Respectfully Submitted,

Richard L. Bland, Jr., Esq.

RLB/cah

Enclosures

Cc: Disciplinary Oversight Committee
Hon. Glenn A. Grant, J.A.D., Acting Administrative Director
of the Administrative Office of the Courts
Stephen W. Townsend, Esq., Clerk, Supreme Court
Gail G. Haney, Esq., Deputy Clerk, Supreme Court
Shelley R. Webster, Acting Director, Mgmt. & Adm. Svcs.
Linda McAdams, Mgmt. & Admin. Svcs.
Julianne K. DeCore, Esq., Chief Counsel, DRB
Ellen A. Brodsky, Esq., First Assistant Counsel, DRB
David E. Johnson, Jr., Esq., Director, OAE
John J. Janasie, Esq., First Asst. Counsel, OAE
Paula Granuzzo, Esq., Statewide Coordinator
Susan Fleming, OAE

1.1 2009 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 50 years (@ \$140)	\$ 8,400,000	
Practicing 2 years (@ \$25)	62,500	
Total Registration Fees		\$ 8,462,500

Other Fees

Prior Year Payments	360,000	
Fee Arbitration Filing Fees	85,000	
Interest on Funds	125,560	
Disciplinary Costs Recovered	150,000	
In-House Counsel	161,000	
Pro Hac Vice Fees	868,000	
Multi-Jurisdictional Practice	31,500	
Reinstatement Fees	73,750	
Late Fees	280,000	
Other Revenue	4,500	
Total Other Fees		\$ 2,139,310

Total Projected Revenues 2009	\$ 10,601,810
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EXPENSES:

Salaries & Benefits:

Salaries at 98%	\$ 6,613,143	
(Allows for 2% vacancy rate)		
Fringe Benefits at 35.27%	\$ 2,320,012	
(7.65% for P/T and O/T)		
Total Salaries & Benefits		\$ 8,933,155

Operating Expenses:

OFFICE EXPENSE	375,925	
NEW SYSTEM	104,625	
HEARING FEES	154,500	
OTHER	585,453	
EQUIPMENT	61,850	
EMOLUMENTS	539,500	
ATTORNEY REGISTRATION COSTS	460,000	
Total Operating Expenses		\$ 2,281,853

Total Projected Expenses 2009	\$ 11,215,008
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Revenues Less Expenses 2009	\$ (613,198)
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ADD: Reserve, End of 2008	<u>\$ 1,209,388</u>
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Reserve, End of 2009 (5.3%)	<u>\$ 596,190</u>
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