

NOTICE TO THE BAR

Proposed 2021 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2021 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 2021 Attorney Discipline Budget be published for comment. Those documents are attached.

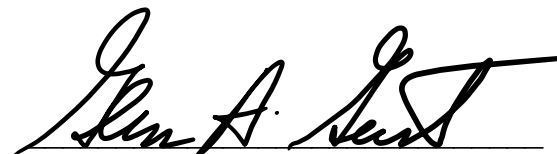
Please send any comments in writing by Friday, November 20, 2020 to:

Clerk of the Supreme Court
Comments on Proposed Disciplinary Budget
Hughes Justice Complex; P.O. Box 970
Trenton, New Jersey 08625-0970

Comments may also be submitted via Internet email to the following address:

Comments.mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", is written over a horizontal line.

Glenn A. Grant, J.A.D.
Acting Administrative Director
of the Courts

Dated: October 20, 2020

1.1 2021 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years @	69,250	\$148	\$	10,249,000
Practicing 2 years @	1,525	\$25		38,125
Total Registration Fees				\$ 10,287,125

Other Fees:

Prior Year Payments		\$	270,000
Pro Hac Vice Fees			849,964
In-House Counsel			191,068
Multi-Jurisdictional Practice			14,504
Disciplinary Costs Recovered			300,000
Fee Arbitration Filing Fees			50,000
Interest on Funds			60,000
Reinstatement Fees			90,000
Late Fees			260,000
Misc. Revenue			3,500
Total Other Fees			\$ 2,089,036

Total Projected Revenues 2021	\$ 12,376,161
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EXPENSES:

Salaries & Benefits:

Salaries with capacity @	95.0%	\$	7,228,993
Allows for vacancy rate @	5.0%		
Fringe Benefits @	51.95%		3,735,306
Total Salaries & Benefits			\$ 10,964,299

Operating Expenses:

Office Expense		\$	554,132
Hearing Fees			188,000
Other Expenses			175,950
Maintenance & Fixed Expenses			396,200
Special Purpose Expenses			1,093,940
Emoluments	\$ 539,500		
Contingencies	7,500		
Attorney Reg. Costs	391,340		
Payment to BBE	155,600		
Equipment Expenses			82,000
Total Operating Expenses			\$ 2,490,222

Total Projected Expenses 2021	\$ 13,454,521
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Revenues Less Expenses 2021	\$ (1,078,360)
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ADD: Ending Reserve, 2020	3,021,327
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Projected Reserve, End of 2021	\$ 1,942,967
	14.4%

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

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September 21, 2020

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: 2021 Attorney Discipline Budget

Dear Chief Justice Rabner and Associate Justices:

The Supreme Court's Disciplinary Oversight Committee ("DOC" or "Committee") considered and approved the proposed 2021 Attorney Discipline Budget and Budget Narrative, which is respectfully submitted herewith. R. 1:20B-4(a)(2). This Budget Report presents the Supreme Court with an overview of expenses, annual assessment, revenues, and reserve projections. The Committee respectfully requests the Court's approval for publication of the Budget Report and the 2021 Disciplinary Budget Overview. Included among the enclosures are budget reserve projections through fiscal year 2023. As discussed below, the Committee recommends that the disciplinary system component of the attorney registration fee remain at \$148 for 2021.

The 2021 budget was prepared in consultation with the Administrative Office of the Court's Office of Management and Administrative Services ("OMAS"). The Committee deeply appreciates the assistance and guidance of

OMAS Director Todd McManus and Assistant Chief Linda McAdams.¹ The Committee is especially thankful to Charles Centinaro, Esq., Director of the Office of Attorney Ethics (“OAE”); Robert Guay, OAE Administrator; Ellen Brodsky, Esq., Chief Counsel of the Disciplinary Review Board (“DRB”); and the staffs of the OAE and DRB.

The Committee thanks its Budget Subcommittee, whose dedicated members, under uniquely challenging circumstances, worked long and hard to ensure thoughtful review and analysis of the proposed budget.² The Committee is, as always, deeply grateful for the wise guidance and counsel of its Justice Liaison, the Honorable Jaynee LaVecchia.

The budget before the Court reflects the careful planning and hard work of the Budget Subcommittee members and staff. Given the pandemic and its ripple effects – some more predictable than others – this year’s budget presented unprecedented challenges. While no one can predict with any degree of precision what 2021 will bring, the DOC submits that the proposed budget carefully weighs, to the fullest extent reasonably possible, what the OAE and DRB will need to maintain their extraordinary work while keeping a close eye on expenses and reserve spending.

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed 2021 budget is \$13,454,521, representing a 3.4% increase from the budget approved for 2020. As discussed in greater detail in Section II(A) below, the primary core expense is salaries and benefits, comprising approximately 81% of the budget. Salary costs (\$7,228,993) are expected to decrease by \$42,217 or approximately .6% when compared with the latest estimate for 2020. The fringe benefit rate (“FBR”) is projected to be 51.95%, an increase of 6.8% from the rate used in the 2020 budget (45.15%). Due to the increase in the FBR, overall

¹ OMAS Director Shelley Webster, who had long been instrumental in the DOC budget process, retired effective September 1, 2020. The DOC is thankful for her many years of exceptional service.

² The Budget Subcommittee consists of Co-Chairs Matthew P. O’Malley, Esq. and James Kravitz, Esq., and members Paris P. Eliades, Esq., Philip Abram and Nora Poliakoff.

personnel costs for 2021, including salaries and fringe benefits, are projected to be \$10,964,229, an increase of approximately 1.6% when compared to the latest estimate for 2020.

As discussed in Section III, the DOC is recommending that the disciplinary system component of the 2021 fee assessment remain the same as in 2020: \$148 for plenary admitted attorneys practicing three to forty-nine years. As the Court is aware, there has been a downward trend in attorney registration revenues, in part due to implementation of the Uniform Bar Examination (“UBE”) and more recently due to the economic impact of COVID-19. The Board of Bar Examiners (“BBE”) has experienced a decrease in revenues and, beginning in 2020, the Court directed that the DOC transfer to the BBE \$2 of the \$148 attorney registration fee previously allocated to the DOC to help fund the BBE’s operations.³

As explained in Section IV, the \$148 attorney registration fee is projected to generate revenues of \$10,249,000.⁴ Attorneys practicing two years or less pay \$25, which is expected to yield another \$38,125. Thus, total revenues from plenary admitted attorney registration fees are anticipated to be \$10,287,125. Other revenue sources such as In-House Counsel and Pro Hac Vice fees (discussed in Section IV) are projected to generate \$2,089,000. Overall, total projected revenues for 2021 are estimated to be \$12,376,161.

With total projected revenues of \$12,376,161 and total expenses of \$13,454,521, there will be a budgeted deficit for 2021 of \$1,078,360. There was a projected budget deficit of \$337,504 in 2020, but the latest estimate shows a deficit of \$998,957. At the end of 2020, the reserve is projected to be \$3,021,327, or 23% of the budget. For the five-year period from 2015 to 2019, actual reserves have averaged 30.26%. The reserve at the end of 2021 is projected to be \$1,942,968, or 14.4% of the operating budget. For 2022 and 2023, reserves are projected at 10.1% and 10.4%, respectively. The Committee’s goal is a 10% reserve (see Section III below for further discussion on the annual assessment and reserve projections).

³ The Court also directed the Lawyers’ Fund for Client Protection to contribute \$4 to the BBE.

⁴ The \$148 fee is for the disciplinary system only. Additional sums are collected for the Lawyers’ Fund for Client Protection, the Lawyers Assistance Program and the Mandatory Continuing Legal Education Program.

II. Expenses.

A. Salaries and Benefits.

The Department of the Treasury Office of Management and Budget has advised that the FBR for the DOC is projected to increase by 6.8% for 2021, from the 2020 budgeted rate of 45.15% to 51.95%. Based on available information, salary costs for 2021 are projected at \$7,228,993 (a .6% decrease when compared to the latest estimate for 2020) and benefits are projected at \$3,735,306 (a 6.2% increase from the latest estimate for 2020).⁵ Thus, salaries and benefits for 2021 are projected to be \$10,964,299 (86 full-time positions) or approximately 81% of the budget.

From 2005 to 2015 (except for 2012 when there were an unusual number of planned retirements and a 5% vacancy rate was used) the vacancy rate was budgeted at 2%. From 2016 to 2019, the Attorney Discipline Budget employed a 3.5% vacancy rate. Following robust discussions, the Committee voted to adopt a 5% vacancy rate for 2020 to more accurately reflect the actual average over the previous five years. A 5% rate is used for the 2021 budget.

B. Operating Costs.

Operating expenses for 2021 total \$2,490,222 or approximately 19% of the budget, representing a 7.15% increase from the latest estimate for 2020. This increase is due, in part, to significant decreases in 2020 expenses caused by the pandemic, and the expectation that expenses will return to normal or near normal levels in 2021. When compared to the 2020 budget, operating expenses are estimated to increase by 4.7%.

When compared to the latest estimate for 2020, a few budget categories remain the same (Equipment Leases, Telephone, Annual Audit, Emoluments and Contingencies). Other categories will experience varying degrees of increases and decreases, some modest and others more significant.

⁵ Salaries for represented staff in the disciplinary system are established through negotiated labor contracts, which expired on June 30, 2020. As of the writing of this Budget Report, these contracts have yet to be renegotiated and ratified.

- Office Supplies: With staff working from home, the cost of office supplies decreased by 23.51% when compared to 2019. A 19.86% increase is projected for 2021 over the latest estimate.
- Recruitment: A hiring freeze was effectuated, and the cost of recruitment in 2020 decreased by 19.82% when compared to 2019. A 100% increase over the latest estimate is projected for 2021.
- Data Processing: The pandemic has caused the OAE and DRB to transition their staff to remote work, requiring additional investment in laptops, scanners and other mobile technology. Some initiatives that were expected to be completed in 2020 had to be delayed due to efforts to move, and adjust, to remote work. Thanks to improvements already implemented and paid for, the impact on the budget is not pronounced. While the latest estimate for 2020 shows a 23.89% increase over 2019, this category is projected to decrease by 12.85% when compared to the latest estimate for 2020.
- Hearing Expenses: Several months without in-person hearings in 2020 caused a decrease in hearing expenses. This category is projected to increase by 26.17% when compared to the latest estimate.
- Meetings: Virtual meetings have resulted in a 79.26% decrease in this category for 2020 when compared to 2019. A 121.05% increase over the latest estimate is projected for 2021.
- Conferences/Education/Training: In 2020, the cost for conferences, education and training was materially impacted by the pandemic. Consequently, there is a significant increase in this category when compared to the latest estimate for 2020. In 2020, the ABA Conference on Professional Responsibility was cancelled, and the National Organization of Bar Investigators Annual Conference was held virtually. In 2021, the National Organization of Bar Counsel (“NOBC”) will hold a virtual mid-year meeting and is planning an in-person annual meeting. In addition, in every odd-numbered year, the NOBC holds a week-long training program to enhance the litigation skills of disciplinary prosecutors. The OAE is requesting \$9,450 to send three attorneys to this training.
- Equipment/General Maintenance: The OAE is requesting funding to replace the worn carpet in its Ewing Township offices. The total estimated cost is \$100,000. \$50,000 is in the 2021 budget (resulting in a 625% increase when compared to the latest estimate) and \$50,000 will be requested in the 2022 budget.

The Budget Subcommittee discussed the need to increase emoluments to Disciplinary Ethics Committee and Fee Arbitration Secretaries. There has not been an increase in emoluments in twelve years. This is not a salary expense. The purpose of emoluments is to help defray the costs associated with serving in those time- and resource-intensive roles, such as expenses for paper, toner, postage and internet/IT. While Subcommittee members agreed that an increase appeared warranted, the Subcommittee determined that, because of the pandemic and its attendant economic burdens, the proposed increase should be tabled and revisited next year. The Committee agreed.

The budget narrative fully addresses all operating budget categories and variances of note.

III. The Annual Assessment and the Reserve.

As noted above, preparation of the 2021 budget was particularly challenging given the unique circumstances of 2020. Revenues have decreased while unpredictability has increased. As in every year, the annual assessment and year-end reserve featured prominently in Budget Subcommittee discussions. Subcommittee members and staff debated the as-yet-unrealized goal of a 10% reserve. Over the years, Paris P. Eliades, Esq., the New Jersey Bar Association (“NJSBA”) representative on the Committee, has expressed strong concern over the reserve level and the annual registration fee. Given current circumstances, however, particularly the pandemic, Mr. Eliades informed the Committee that he and the NJSBA leadership are not objecting to the proposed budget or the registration fee.

The OAE and DRB always strive to keep expenses reasonable, understanding that some expenses, particularly those related to negotiated salaries and fringe benefits, are difficult to predict. As noted above, the FBR – a major variable in the budget process – is projected to increase from 45.15% to 51.95%. The rate is subject to negotiations with the federal government, which are ongoing, and is usually finalized towards the end of the year. The 2021 budget contemplates a deficit of \$1,078,360 at the end of 2021, which will further reduce the reserve. If the projections bear out, using a 5% vacancy rate, the reserve is projected to be 10.4% at the end of fiscal year 2023.

The DOC recommends that the annual assessment remain at \$148, where it has been for the last seven years. As is the case every year, New Jersey’s annual

assessment is reasonable in relation to other states.⁶ With the registration fee remaining at \$148, the reserve is projected to decrease from \$3,021,327 or 23% of the budget, the latest estimate for 2020, to \$1,942,968 or 14.4% of the operating budget for 2021. It is estimated that, should the registration fee remain at \$148 for 2022 and 2023, the resultant reserves will be 10.1% and 10.4% respectively.

IV. Revenue Projections.

Based on an annual assessment of \$148, the total revenue projected for 2021 is \$12,376,161. This is a 2.2% increase (\$262,125) from the latest estimate for 2020. However, it represents a 2.4% decrease (\$302,125) from the 2020 approved budget. It is estimated that 69,250 attorneys practicing three to forty-nine years will pay the \$148 fee (750 less than projected for 2020) while 1,525 attorneys practicing two years or less will pay the \$25 fee (seventy-five less than projected for 2020). Thus, total receipts from plenary admitted attorneys paying the registration fee are projected to be \$10,287,125, or approximately 83% of revenue.

Pro hac vice fees are estimated to be paid by 5,743 attorneys in 2021, generating \$849,964 or approximately 6.9% of all revenue. 1,291 attorneys are projected to pay for in-house counsel licenses in 2020, generating \$191,068 in revenue. Other significant sources of revenue include late fees for attorneys who fail to timely register (\$260,000), prior years' assessments that attorneys failed to pay (\$270,000), and the recovery of the costs of disciplinary investigations and proceedings from disciplined attorneys (\$300,000).

V. Conclusion.

The DOC is thankful to the OAE and DRB for their diligent work in preparing and presenting the 2021 Attorney Discipline Budget and in assessing, as best as possible, the projected impact of COVID-19. The Committee is confident that the budget is fiscally responsible and will provide the OAE and DRB with the

⁶ According to the International Survey of Attorney Licensing Fees, the average fee nationwide is \$330. New Jersey's fee of \$212 includes other assessments, as noted in footnote 4, and is 8th lowest out of eighteen "voluntary" states without a mandatory bar association membership requirement. Of those states with lower registration fees, only one state, New York, regulates more attorneys than New Jersey.

resources needed to continue serving the public, the profession, the disciplinary system, and the judiciary at large. As always, the Committee thanks the many volunteers that serve New Jersey's disciplinary system, making it one of the best in the country.

The DOC respectfully requests that the Court permit the publication of this Budget Report and the Budget Overview. Following the public comment period, the Committee will resubmit the 2021 Attorney Discipline Budget for the Court's approval.

Respectfully Submitted,
/s/ Matthew P. O'Malley
Matthew P. O'Malley, Esq.
Chair

Enclosures

cc: Members of the Disciplinary Oversight Committee
Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of New Jersey Courts
Steven Bonville, Esq., Chief of Staff, AOC
Heather Joy Baker, Esq., Clerk of the Supreme Court
Gail G. Haney, Esq., Deputy Clerk of the Supreme Court
Todd McManus, Director, Mgmt. & Admin. Svcs.
Linda McAdams, Ass't Chief, Mgmt. & Admin. Svcs.
Ellen Brodsky, Esq., Chief Counsel, DRB
Charles Centinaro, Esq., Director, OAE
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