

NOTICE TO THE BAR

Proposed 2022 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2022 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 2022 Attorney Discipline Budget be published for comment. Those documents are attached.

Please send any comments in writing by Monday, November 8, 2021 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.



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

Dated: October 7, 2021

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

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September 28, 2021

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: 2022 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 2022 Attorney Discipline Budget and Budget Narrative (enclosed). R. 1:20B-4(a)(2). This Budget Report presents the Court with an overview of expenses, annual assessment, revenues, and reserve projections. Included among the enclosures are budget reserve projections through fiscal year 2024. The Committee respectfully requests the Court's approval for publication of the Budget Report and the 2022 Disciplinary Budget Overview. As discussed below, the Committee recommends that the disciplinary system component of the attorney registration fee remain at \$148 for 2022.

The 2022 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 Director of Financial Services Valerie Frage. The Committee is especially thankful to Charles Centinaro, Esq., Director of the Office of Attorney Ethics ("OAE"); Robert Guay, OAE Administrator; Johanna Barba Jones, 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 worked diligently to ensure thoughtful review and analysis of the proposed budget.¹ The Committee is, as always, very thankful for the wise guidance and counsel of its Justice Liaison, the Honorable Jaynee LaVecchia.

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed 2022 budget is \$14,383,882, representing a 6.91% increase from the budget approved for 2021. As discussed in greater detail below (Section II(A)), the primary core expense is salaries and benefits, comprising approximately 82% of the budget. Salary costs are expected to increase by \$308,273, or 4.38%, when compared with the latest estimate for 2021.² The fringe benefit rate (“FBR”) is projected to be 60.05%, an increase of 8.1% from the rate used in the 2021 budget. Overall personnel costs for 2022, including salaries and benefits, are expected to increase by approximately 7.97% when compared to the latest estimate for 2021.

As discussed in Section III, the DOC is recommending that the disciplinary system component of the 2022 fee assessment remain the same as in 2021: \$148 for plenary admitted attorneys practicing three to forty-nine years. The Board of Bar Examiners (“BBE”) has experienced a decrease in revenues and, beginning in 2020, the Court directed that the DOC pay 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 registration fee is projected to generate revenues of \$10,360,000 from attorneys practicing from three to forty-nine years.⁴ Attorneys practicing two years or less pay \$25, yielding another \$28,750. Thus, total revenues from plenary admitted attorney registration fees are anticipated to be

¹ The Budget Subcommittee consists of Co-Chairs Matthew P. O’Malley, Esq. and James Kravitz, Esq., and members Paris P. Eliades, Esq., Thomas J. Reck, and Nora Poliakoff.

² Current labor contracts will expire on June 30, 2024.

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.

\$10,388,750. When other fees are added from In-House Counsel, Pro Hac Vice, and other revenue sources (\$2,106,470), total projected revenues for 2022 are estimated to be \$12,495,220.

With total projected revenues of \$12,495,220 and total expenses of \$14,383,882, there will be a budgeted deficit for 2022 of \$1,888,662. There was a budgeted deficit of \$1,078,360 in 2021, but the latest estimate shows a deficit of \$650,904. At the end of 2021, the reserve is projected to be \$3,167,184, or 24% of the budget. For the period from 2015 to 2020, actual reserves have averaged 30.25%. The reserve at the end of 2022 is projected to be \$1,278,522, or 8.9% of the operating budget. For 2023 and 2024, reserves are projected at 9.3% and 6.5%, respectively. The Committee's goal is a 10% reserve (see Section III below for further discussion on the annual assessment and reserve projections).

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 8.1% for 2022, from the 2021 budgeted rate of 51.95% to 60.05%. Based on available information, salary costs for 2022 are projected at \$7,345,356 (4.38% higher than the 2021 latest estimate), and benefits are projected at \$4,410,887 (14.53% higher than the 2021 latest estimate). Thus, salaries and benefits for 2022 are projected to be \$11,756,243 (86 full-time positions), or approximately 82% 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 beginning in 2020 to more accurately reflect the actual average over the previous five years. A 5% rate continues to be used for the 2022 budget.

B. Operating Costs.

Operating expenses for 2022 total \$2,627,639, or approximately 18% of the budget, representing a 15.07% increase from the latest estimate for 2021, which is significantly larger than usual. This increase is largely attributable to the decrease in 2021 operating expenses as a result of the pandemic, as well as the expectation that expenses will return to near-normal levels in 2022. It is notable that while many of these expenses are higher than the 2021 latest estimate, most are projected

to be lower than the amounts requested in the 2021 budget. The 2022 increase in operating expenses also is due to a proposed increase in emoluments. Notable expenses include the following:

- Insurance: In 2021, the OAE and DRB experienced an unexpected increase in premiums in Workers' Compensation and property and liability insurance policies. This increase was attributable to the need for staff to perform most work remotely, which placed the offices in a higher ratable category. As the Judiciary returns to office-based operations, it is expected that premiums will decrease, reducing these costs by 13.4% from the 2021 latest estimate. Because it is unclear how the insurance provider will classify the offices, the 2022 request of \$87,000 is higher than the amount requested in the 2021 budget.
- Emoluments: During the 2021 budget cycle, in light of the economic burdens brought on by the pandemic, the Committee determined to table a proposed increase in emoluments paid to District Ethics Committee and District Fee Arbitration Committee Secretaries. For 2022, the OAE is requesting that this increase occur at rate of 25%, rendering the emoluments amount 32.59% higher than the latest estimate for 2021. Emoluments are not a salary expense, but rather are used by the Secretaries to help defray the administrative costs associated with serving in those time- and resource-intensive roles, such as expenses for paper, toner, postage and internet/IT. Emoluments have not been increased in thirteen years. The Budget Subcommittee discussed the need to increase emoluments beginning in 2022, and the Committee agreed to recommend the proposed 25% increase, or \$175,800.

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

III. The Annual Assessment and the Reserve.

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 the circumstances in 2020 and 2021 brought about by the pandemic, Mr. Eliades informed the Committee that he and the NJSBA leadership

were not objecting to the proposed budget or the registration fee in the 2021 budget.

While the OAE and DRB requested a \$2 increase in the registration fee for 2022 in order to maintain a 2022 year-end reserve of 10% percent, Mr. Eliades moved to keep the registration fee at \$148 in order to allow the DOC an opportunity to conduct a separate analysis of the previous years' budget projections against the actual revenues received and expenses incurred to see whether any trends could be discerned that have thus far prevented more precise budget projections. In doing so, the DOC recognizes that the uncertainty of the FBR plays a significant role in these projections. The DOC voted in favor of the motion in large measure because there is a sufficient reserve to address any potential shortfall in revenues and in order to avoid asking the Court for successive fee increases, if warranted.

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 51.95% to 60.05%. The rate is subject to negotiations with the federal government, which are ongoing, and is usually finalized towards the end of the year. The 2022 budget contemplates a deficit of \$1,888,662 at the end of 2022, which will further reduce the reserve. If the projections bear out, using a 5% vacancy rate, the reserve is projected to be 6.5% at the end of fiscal year 2024.

The Budget Subcommittee and Committee as a whole debated the question of whether keeping the attorney registration fee at its current rate could result in a decrease of the reserve below 10%. The Committee decided that, over the next year, it will further examine historical trends in preparation of revisiting the possibility of increasing the fee in the 2023 budget. For 2022, the DOC recommends that the annual assessment remain at \$148, where it has been for the last eight years. As is the case every year, New Jersey's annual assessment is reasonable in relation to other states.⁵ With the registration fee remaining at \$148, the reserve is projected to decrease from the 2021 projected reserve of \$3,167,184,

⁵ 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 3, 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.

or 24% of the operating budget, to \$1,278,522, or 8.9% of the operating budget, for 2022. It is estimated that, should the registration fee remain at \$148 for 2023 and 2024, the resultant reserves will be 9.3% and 6.5% respectively.

IV. Revenue Projections.

Based on an annual assessment of \$148, the total revenue projected for 2022 is \$12,495,220. This is a 0.2% decrease (\$25,678) from the latest estimate for 2021. It is estimated that 70,000 attorneys practicing three to forty-nine years will pay the \$148 fee (750 more than projected for 2021), while 1,150 attorneys practicing two years or less will pay the \$25 fee (375 less than projected for 2021). Thus, total receipts from plenary admitted attorneys paying the registration fee are projected to be \$10,388,750, or approximately 82% of revenue.

Pro hac vice fees are estimated to generate \$890,220, while in-house counsel licenses are expected to generate \$185,000 in revenue. Other significant sources of revenue include late fees for attorneys who fail to timely register (\$290,000), prior years' assessments that attorneys failed to pay (\$283,000), 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 2022 Attorney Discipline Budget and in assessing, as best as possible, the continued impact of COVID-19. The Committee is confident that the budget is fiscally responsible and will provide the OAE and DRB with the 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 2022 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
Hon. 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.
Valerie Frage, Ass't Director of Financial Svcs.
Johanna Barba Jones, Esq., Chief Counsel, DRB
Charles Centinaro, Esq., Director, OAE
Isabel McGinty, Esq., Statewide Ethics Coordinator, OAE
Robert Guay, Office Administrator, OAE

1.1 2022 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years @	70,000	\$148	\$ 10,360,000
Practicing 2 years @	1,150	\$25	28,750
Total Registration Fees			\$ 10,388,750

Other Fees:

Prior Year Payments		\$	283,000
Pro Hac Vice Fees			890,220
In-House Counsel			185,000
Multi-Jurisdictional Practice			14,800
Disciplinary Costs Recovered			300,000
Fee Arbitration Filing Fees			42,000
Interest on Funds			10,000
Reinstatement Fees			87,500
Late Fees			290,000
Misc. Revenue			3,950
Total Other Fees			\$ 2,106,470

Total Projected Revenues 2022 **\$ 12,495,220**

EXPENSES:

Salaries & Benefits:

Salaries with capacity @	95.0%	\$	7,345,356
Allows for vacancy rate @	5.0%		
Fringe Benefits @	60.05%		4,410,887
Total Salaries & Benefits			\$ 11,756,243

Operating Expenses:

Office Expense		\$	585,023
Hearing Fees			178,500
Other Expenses			177,420
Maintenance & Fixed Expenses			358,200
Special Purpose Expenses			1,273,496
Emoluments	\$ 715,300		
Contingencies	7,500		
Attorney Reg. Costs	393,666		
Payment to BBE	157,030		
Equipment Expenses			55,000
Total Operating Expenses			\$ 2,627,639

Total Projected Expenses 2022 **\$ 14,383,882**

Revenues Less Expenses 2022 **\$ (1,888,662)**

ADD: Projected Ending Reserve, 2021 **3,167,184**

Projected Reserve, End of 2022 **\$ 1,278,522**
8.9%