

NOTICE TO THE BAR

Proposed 2023 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2023 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 2023 Attorney Discipline Budget be published for comment. Those documents are attached.


Please send any comments in writing by Monday, November 14, 2022 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
Administrative Director of the Courts

Dated: October 14, 2022

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

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September 21, 2022

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

Re: 2023 Attorney Discipline Budget

Dear Members of the Supreme Court:

The Supreme Court's Disciplinary Oversight Committee ("DOC" or "Committee") considered and approved the proposed 2023 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 2023 Disciplinary Budget Overview. As discussed below, the Committee recommends that the disciplinary system component of the attorney registration fee increase by \$27 from \$148 to \$175 for 2023, for a total attorney registration fee of \$239 (assuming the other components of the attorney registration fee remain static).

The 2023 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 Robert Guay, Office of Attorney Ethics ("OAE") Business and Legal Administrator, and the dedicated leadership and staff of the OAE and the Disciplinary Review Board ("DRB").

The Committee thanks its Budget Subcommittee, whose members worked diligently to ensure thoughtful review and analysis of the proposed budget.¹ The Committee also is very thankful for the wise guidance and counsel of its Justice Liaison, the Honorable Anne M. Patterson.

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed 2023 budget is \$15,018,354, representing a 4.4% increase from the budget approved for 2022. As discussed in greater detail below (Section II(A)), the primary core expense is salaries and benefits, comprising approximately 83% of the budget. Salary costs are expected to increase by \$181,230, or 2.5%, when compared with the latest estimate for 2022.² The fringe benefit rate (“FBR”) is projected to be 67.5% of salaries for full-time staff, an increase of 7.4% from the rate used in the 2022 budget. Overall personnel costs for 2023, including salaries and benefits, are expected to increase by approximately 6.4% when compared to the latest estimate for 2022.

As discussed in Section III, the DOC is recommending that the disciplinary system component of the annual attorney registration fee increase in 2023 to \$175 for plenary admitted attorneys practicing three to forty-nine years. This component of the fee has not increased in 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 attorney registration fee previously allocated to the DOC to help fund the BBE’s operations.³

As explained in Section IV, the \$175 registration fee is projected to generate revenues of \$12,223,750 from attorneys practicing from three to forty-nine years.⁴ Attorneys practicing two years or less pay \$25, yielding another \$38,125. Thus, total

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 \$175 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.

revenues from plenary admitted attorney registration fees are anticipated to be \$12,261,875. When other fees are added from in-house counsel, pro hac vice, and other revenue sources (\$2,342,725), total projected revenues for 2023 are estimated to be \$14,604,600.

With total projected revenues of \$14,604,600 and total expenses of \$15,018,354, there will be a budgeted deficit for 2023 of \$413,754. There was a budgeted deficit of \$1,888,662 in 2022, but the latest estimate shows a deficit of \$1,778,504. For the period from 2016 to 2021, actual reserves have averaged 29.95%. The reserve at the end of 2022 is projected to be \$1,695,434, or 11.9% of the operating budget. For 2023 and 2024, reserves are projected at 8.5% and 5.3%, 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 is projected to increase by 7.4% for 2023, from the 2022 budgeted rate of 60.05% to 67.5%. Based on available information, salary costs for 2023 are projected at \$7,427,858 (2.5% higher than the 2022 latest estimate), and benefits are projected at \$5,010,090 (12.75% higher than the 2022 latest estimate). Thus, salaries and benefits for 2023 are projected to be \$12,437,948 (based on 86 full-time positions), or approximately 83% of the budget.

From 2005 to 2015, except for 2012, the vacancy rate was budgeted at 2%.⁵ From 2016 to 2019, the budget employed a 3.5% vacancy rate. In 2020, the Committee voted to adopt a 5% vacancy rate in order to more accurately reflect the average over the previous five years. Following additional discussions and historical research during this year's budget cycle, which revealed an approximately 7% average vacancy rate over the past 10 years (which included an unusually high vacancy rate for 2021), the Committee voted to adopt a 7% rate for the 2023 budget.

B. Operating Expenses.

Operating expenses for 2023 total \$2,580,406, or approximately 17% of the budget, representing a 1.6% increase over the latest estimate for 2022 and a decrease of 1.8% from the 2022 budget.

⁵ In 2012, there were an unusually high number of planned retirements, and a 5% vacancy rate was used.

In 2021, operating expenses decreased as a result of the pandemic, but are beginning to return to near-normal levels in 2022. It is expected that this trend will continue in 2023. Notable expenses include the following:

- Travel: The OAE is requesting \$3,500 more for travel expenses than the approved 2022 budget due to the dramatic increase in gasoline prices.
- Insurance: In 2021, the OAE and DRB experienced an unexpected significant increase in premiums in workers' compensation and property and liability insurance policies to almost \$100,000. This increase was attributable to circumstances arising from the pandemic. Insurance levels are now returning to pre-pandemic levels, with the latest estimate for 2022 standing at \$54,013. The best estimate for 2023 is \$65,000.
- OAE In-State Training Conference: The 2022 Conference will be held entirely remotely. Next year, the OAE plans to offer a hybrid conference where participants can choose whether to attend in person or remotely. Because of the significant costs associated with streaming the conference, the OAE is requesting an increased appropriation of \$20,000, which is \$5,000 more than the amount approved in previous years. The hybrid method will allow many more District Ethics Committee and District Fee Arbitration Committee volunteers to attend.

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. For 2023, the OAE and DRB initially proposed a \$32 increase in the registration fee in order to maintain a year-end reserve of 10%. Subcommittee members and staff debated this as-yet-unrealized goal, recognizing that the projected year-end-reserve for 2022 of 11.9% is a significant reduction from prior years and much closer to the 10% goal. Over the years, Paris P. Eliades, Esq., the longstanding New Jersey Bar Association ("NJSBA") representative on the Committee, has expressed strong concern over the reserve level and the annual registration fee. Ultimately, in light of historical research and analysis predominantly conducted by OAE staff, Mr. Eliades, and Thomas Reck, consensus was reached to raise the annual registration fee and the

vacancy rate in an effort to consistently reach the goal of a 10% reserve while maintaining necessary funding for the attorney disciplinary system.

During the 2022 budget cycle, the OAE and DRB proposed a \$2 increase in the registration fee. The DOC did not recommend an increase in 2022, deciding that, during the following year, the Budget Subcommittee would conduct an in-depth 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. The DOC's decision was largely based on the existence of a sufficient reserve to address any potential shortfall in revenues (the 2021 year-end reserve was 27.3% of the budget). It also wanted to avoid the potential of asking the Court for successive fee increases.

The Budget Subcommittee's subsequent analysis, which included a review of the impact of expenses on the reserve back to 2015, showed that actual expenses are historically lower than projected expenses. The OAE and DRB always strive to keep expenses reasonable, understanding that some expenses, particularly those related to negotiated salaries and the FBR, are difficult to predict. As noted above, the FBR – a major variable in the budget process – is projected to increase from 60.05% to 67.45%. Over the past three years, the FBR has increased by more than 21%, which has substantially eroded the reserve. The FBR is subject to negotiations with the federal government, which are ongoing, and is usually finalized towards the end of the year. The DOC recognizes that the FBR plays a significant role in budget projections and acknowledges that this, as well as factors such as the departure of employees, are unpredictable and beyond the control of the OAE and DRB. The 2023 budget contemplates a deficit of \$413,754, which is anticipated to further reduce the reserve.

The Budget Subcommittee determined that increasing the vacancy rate to better match the ten-year average will drive down salary and benefit projections, which will allow for a smaller increase in the attorney registration fee while still maintaining a sufficient reserve. Mr. Eliades proposed a 10% vacancy rate with a \$24 fee increase. The OAE and DRB explained that a 7% vacancy rate is more in line with the ten-year average, thus proposing a fee increase of \$27 using a 7% vacancy rate for a projected year-end reserve of 8.5% in 2023. The OAE and DRB advised that this may warrant a further increase in 2024, but there is a sufficient reserve to address any potential shortfall in revenues while also avoiding a fee increase of more than \$30 at this time.

For 2023, the DOC unanimously recommends that the disciplinary system component of the annual assessment increase by \$27 to \$175, with the intention of

further analyzing the impact of the increased vacancy rate on salary and benefit projections and reserve projections over the coming year. New Jersey's annual assessment remains reasonable in relation to other states.⁶ With the registration fee increasing to \$175, the reserve is projected to decrease from the 2022 projected reserve of \$1,695,434, or 11.9% of the operating budget, to \$1,281,680, or 8.5% of the operating budget, for 2023. It is estimated that, should the registration fee remain at \$175 for 2024, the resultant reserve will be 5.3%.

IV. Revenue Projections.

Based on an annual assessment of \$175, the total revenue projected for 2023 is \$14,604,600. This is a 17.3% increase (\$2,153,051) from the latest estimate for 2022. It is estimated that 69,850 attorneys practicing three to forty-nine years will pay the \$175 fee (150 less than projected for 2022), while 1,525 attorneys practicing two years or less will pay the \$25 fee (375 more than projected for 2021). Thus, total receipts from plenary admitted attorneys paying the registration fee are projected to be \$12,261,875, or approximately 84% of revenue.

Pro hac vice fees are estimated to generate \$1,050,000, while in-house counsel licenses are expected to generate \$205,625 in revenue. Other significant sources of revenue include late fees for attorneys who fail to timely register (\$305,000), prior years' assessments that attorneys failed to pay (\$295,000), 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 2023 Attorney Discipline Budget. 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.

⁶ The average annual fee nationwide is \$344. New Jersey's increased fee of \$239 includes other assessments, as noted in footnote 3, and is eleventh lowest out of eighteen "voluntary" states without a mandatory bar association membership requirement. Prior to this fee increase, New Jersey's fee was eighth lowest. Of those states with lower registration fees, only one state, New York, regulates more attorneys than New Jersey.

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 2023 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.
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
Jason Saunders, Esq., First Assistant Ethics Counsel, OAE
Isabel McGinty, Esq., Statewide Ethics Coordinator, OAE
Robert Guay, Business and Legal Administrator, OAE

1.1 2023 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

| | | | |
|---------------------------|--------|-------|---------------|
| Practicing 3 - 49 years @ | 69,850 | \$175 | \$ 12,223,750 |
| Practicing 2 years @ | 1,525 | \$25 | 38,125 |

Total Registration Fees \$ 12,261,875

Other Fees:

| | | | |
|-------------------------------|--|----|-----------|
| Prior Year Payments | | \$ | 295,000 |
| Pro Hac Vice Fees | | | 1,050,000 |
| In-House Counsel | | | 205,625 |
| Multi-Jurisdictional Practice | | | 17,150 |
| Disciplinary Costs Recovered | | | 300,000 |
| Fee Arbitration Filing Fees | | | 36,000 |
| Interest on Funds | | | 50,000 |
| Reinstatement Fees | | | 80,000 |
| Late Fees | | | 305,000 |
| Misc. Revenue | | | 3,950 |

Total Other Fees \$ 2,342,725

Total Projected Revenues 2023 \$ 14,604,600

EXPENSES:

Salaries & Benefits:

| | | | |
|---------------------------|--------|----|-----------|
| Salaries with capacity @ | 93.0% | \$ | 7,427,858 |
| Allows for vacancy rate @ | 7.0% | | |
| Fringe Benefits @ | 67.45% | | 5,010,090 |

Total Salaries & Benefits \$ 12,437,948

Operating Expenses:

| | | | |
|------------------------------|----|---------|-----------|
| Office Expense | | \$ | 522,048 |
| Hearing Fees | | | 155,500 |
| Other Expenses | | | 168,850 |
| Maintenance & Fixed Expenses | | | 352,200 |
| Special Purpose Expenses | | | 1,326,808 |
| Emoluments | \$ | 715,300 | |
| Contingencies | | 5,000 | |
| Attorney Reg. Costs | | 449,178 | |
| Payment to BBE | | 157,330 | |
| Equipment Expenses | | | 55,000 |

Total Operating Expenses \$ 2,580,406

Total Projected Expenses 2023 \$ 15,018,354

Revenues Less Expenses 2023 \$ (413,754)

ADD: Projected Ending Reserve, 2022 1,695,434

Projected Reserve, End of 2023 \$ 1,281,681

8.5%