

NOTICE TO THE BAR

Re: Proposed 2013 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2013 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 2013 Attorney Discipline Budget be published for comment.

Those seeking to comment should do so in writing by November 8, 2012, 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

/s/ Mark Neary

Mark Neary, Esq.
Clerk of the Supreme Court

Dated: October 5, 2012

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

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October 1, 2012

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: 2013 Attorney Discipline Budget

Dear Chief Justice Rabner and Associate Justices:

The Supreme Court's Disciplinary Oversight Committee (DOC or Committee), in consultation with the Administrative Office of the Court's Office of Management and Administrative Services, has reviewed the proposed 2013 Attorney Disciplinary Budget. The Committee thanks Julianne DeCore, Esq., Chief Counsel of the DRB; Charles Centinaro, Esq., Director of the OAE; Susan Fleming, OAE Administrator; and the staffs of the DRB and OAE for their efforts in preparing the proposed budget. The Committee also thanks the Office of Management and Administrative Services, Shelley Webster, Director, and Linda McAdams, Assistant Chief, for their assistance during the budget process. Finally, the DOC acknowledges the expertise of the Budget Subcommittee and commends it for its efforts.¹

¹ The Budget Subcommittee members are Maureen Kerns, Esquire, Co-Chair; Tony Guacci, Co-Chair; Mike Furey, Esquire; Paris Eliades, Esquire; Rich Sackin; Joel Rosen, Esquire, and Al Clark.

The Committee considered and approved the proposed 2013 budget at its meeting on September 12, 2012. This letter reflects the Committee's recommendations. The Committee requests the Court's review and approval to publish this letter and the 2013 Disciplinary Budget Overview.² The Budget Reserve Projections through 2015 are also enclosed for the Court's consideration.³

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed budget for 2013 is \$12,798,117. This represents approximately a 14% increase over the projected actual expenses for 2012. As discussed in Section II of this report, the increase in the budget flows primarily from two core expenses: salaries and benefits, and technology/data processing. Expenses for salaries and benefits are expected to increase over actual amounts spent in 2012 because a) the cost of benefits continues to climb, and b) retirements and resignations that the disciplinary system has experienced for the last four years have ceased and the OAE and DRB anticipate full staffing in 2013. Technology/data processing expenses are projected to increase as a result of programs that were approved previously but were not implemented because the OAE's IT manager position was vacant, as well as new programs directed (or likely to be directed) by the Supreme Court and the Administrative Office of the Courts. Implementation of those programs will begin in 2013.

As discussed in Section III, which addresses the annual assessment and the reserve, the \$5 reduction in the attorney fee from \$140 to \$135, recommended by the DOC in the 2012 budget and approved by the Court, contributed to

² The Budget Overview is a synopsis of the budget. It is published in lieu of the entire budget report, pursuant to Rule 1:20B-4(b).

³ Following the 2012 budget process, the Court instructed that future budget projections include only the proposed budget year plus the following two years, rather than five years as projected in the past. The Court recognized that projections beyond two years historically have been of limited value because of the difficulty of projecting results beyond two years.

the reduction in the high level of the reserve, as intended. However, because the reserve remains higher than desired, the DOC recommends that the Court retain the \$135 assessment for 2013. As explained in Section IV, describing revenue projections, a \$135 registration fee is expected to produce \$11,178,000 in revenues.⁴ The \$1,620,117 difference between expenses and revenues will be made up by further reducing the reserve from its estimated 2012 total of \$3,996,552 to \$2,376,433. This reserve will still constitute approximately 18.6% of the 2013 budget. By the end of 2014, depending on what annual assessment is charged that year, it is not unreasonable to anticipate a 10% reserve.

II. Expenses.

A. Salaries and Benefits.

Salaries and benefits typically constitute approximately 80% of the budget, and that pattern continues for 2013 with salaries and benefits projected to cost \$10,096,328 (79% of the \$12,798,117 budget). This number reflects full staffing for both the OAE and DRB, including one new attorney position in the DRB, minus a factor of 2% for unanticipated vacancies.

Salaries for represented staff in the disciplinary system are established through negotiated labor contracts. The OAE and DRB have no control over these contracts. The most recent labor contract for represented judiciary employees expired on June 30, 2012, and the Administrative Office of the Courts (AOC) is currently in the process of negotiating contracts for fiscal years 2013 to 2016. If the AOC enters into contracts that are similar to the Executive branch contracts, OAE and DRB personnel are not expected to receive cost-of-living raises in 2013. Staff members who are not at the top of their salary ranges may

⁴ The proposed \$135 fee applies to attorneys admitted between 3 and 50 years. The \$25 fee for attorneys in their second year of practice has not changed since 1999 and remains the same in this budget. Attorneys are not charged a fee for their first year of practice. 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.

receive progression increases, however. Both of these circumstances have been assumed in the 2013 budget.

As noted above, a vacancy rate is always factored into the disciplinary budget for salaries and benefits. This figure contemplates the loss of staff due to retirements, terminations, and resignations. Unless vacancies are considered, more funds are budgeted for salaries and benefits than are actually used. From 2005 to 2011, the DOC applied a 2% vacancy rate in preparing the budget for salaries and benefits. In 2012, the DOC applied a 5% vacancy rate because it had received notice that a significant number of OAE employees planned to retire that year. Because those vacant positions have now been filled (or will be filled by the start of the budget year) and the OAE and DRB are not aware of any impending retirements, the 2013 budget returns to the 2% vacancy assumption. Applying the 2% vacancy rate to expected actual salaries results in a budget for salaries totaling \$7,035,244 for 2013. This represents an 8% increase over the \$6,515,888 projected actual salary expenditures for 2012.

With regard to benefits, the Office of Management and Budget estimates an increase for state employees from 36.79% of salary costs for 2012 to 43.8% for 2013, excluding workers' compensation contributions. The actual rate will not be finalized until December. Based on this estimated rate, the 2013 budget for benefits is \$3,061,084— a 28% increase over 2012's projected \$2,389,297 expenditure.

As a result of the increased benefit rate/costs and the full staffing of the disciplinary system for the first time in several years, the 2013 budget for salaries and benefits reflects a 13.4% increase over the projected actual costs for 2012.

B. Other Notable Expenses.

1. Technology/Data Processing. Aside from salaries and benefits, the largest increase in proposed 2013 expenses comes from improvements to information technology (IT). For the past two years, the disciplinary budget has included funding to implement a multi-year project providing improvements to the OAE's IT environment

through significant infrastructure and software upgrades.⁵ However, a long-term vacancy in the OAE's IT manager position caused most of the planned improvements to be placed on hold. Because the OAE anticipates that a new IT manager will be on board by early 2013, this budget includes the funds to begin the implementation of these long-anticipated improvements.

The DRB also is moving ahead with IT improvements, the most significant of which is the addition of a portal to allow the electronic filing of documents related to disciplinary cases, electronic submission of appeals, and electronic payment of costs.

Also factored into the technology/data processing budget is funding to comply with an AOC requirement that all judiciary computer applications develop and maintain a Disaster Recovery Plan for case and document management systems. This requirement applies to both the DRB and the OAE.

Finally, upgrades to the OAE's and DRB's websites are included in the budget for 2013. The upgrades were recommended in 2011 by a consultation team from the American Bar Association's Standing Committee on Professional Discipline, which evaluated New Jersey's disciplinary system. The Committee's July 2011 report, entitled "New Jersey: Report on the Lawyer Discipline System," offered a number of recommendations. Included among them was a recommendation to improve access to information through the DRB's and OAE's websites. In part, these improvements will permit members of the bar and the public to search for and locate disciplinary complaints and answers, motions for discipline and temporary suspension, hearing dates and locations, DRB decisions, Supreme Court orders relating to disciplinary matters, and the ethics histories of all attorneys. Approximately 27.5% of the technology/data processing budget is attributable to the website improvements.

⁵ Software upgrades will be made to the OAE's customized case management applications and to desktops and servers. Upgrades to the OAE's network infrastructure will include the web/database server replacement.

The total technology/data processing budget for 2013 is \$517,619, an increase of 40% over the amount that was budgeted for technology/data processing in 2012.

2. Costs Associated with Holding Disciplinary Hearings in Courtrooms. Historically, disciplinary hearings have been held in whatever location was available, most frequently an attorney's office. Court rules require the recording of disciplinary hearings, and the OAE contracted with two shorthand reporting services to provide these services—an expense that was included in each annual disciplinary budget. The 2011 report by the American Bar Association recommended that disciplinary hearings take place in courtrooms for purposes of decorum, security, and ADA accommodations. By using courtrooms for most of the disciplinary hearings, there will be no need to use court reporters since most New Jersey courthouses are now equipped with CourtSmart, a software system that digitally records the proceedings. Court reporting services will be used only when a courtroom is not available and in those situations when a certified record is necessary to support a temporary suspension application. As a result, the 2013 budget for court reporting is lower than in prior years, but any savings will be used toward the OAE's one-time purchase of the CourtSmart software and the hiring and training of a part-time employee required to operate the system for the disciplinary hearings.

III. The Annual Assessment and the Reserve.

Last year 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. By bringing in less revenue and making up the difference from the reserve, the DOC anticipated reducing the reserve to a level closer to its goal of 10% of annual expenses. For 2013, the DOC recommends that the Court again approve a \$135 assessment to continue the progress made last year in decreasing the reserve.⁶

⁶ After the 2012 budget was approved last year, the Court decided to provide an incentive to attorneys who filed their annual registrations online by granting them a \$5 discount. The discount, combined with other marketing efforts by the Client Protection Fund and the AOC,

The difference between the 2013 budget for expenses (\$12,798,117) and the projected revenues at the \$135 fee level (\$11,178,000) is \$1,620,117, or 12.6% of the budget, which must be taken from the reserve. It is projected that continuing the \$135 fee will result in a reduction in the reserve by the end of 2013 from a high of \$4,354,388 (40.2% of the expenses incurred in 2011) to \$2,376,433 (18.6% of the 2013 budget).

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 ranked #10.

IV. Revenue Projections.

Based on an annual assessment of \$135, total revenue projected for 2013 is \$11,178,000. This is a 3% increase over the projected actual revenue for 2012, or \$315,820. For 2013, it is estimated that 67,500 attorneys practicing between three and 50 years will pay the fee--an increase of 1,000 attorneys over the latest estimate for 2012. It is expected that 3,000 attorneys who have been practicing law two years or less will pay the \$25 fee, slightly more than the number who paid this fee in 2012 (2,900). Total receipts from plenary admitted attorneys paying the registration fee are projected to be \$9,187,500, or 82% of revenue.

Pro hac vice fees are estimated to be paid by 5,700 attorneys in 2013, generating \$769,500 or approximately 7% of all revenue. Approximately 1,175 attorneys are projected to pay the fee to be licensed as in-house counsel in 2013, generating \$158,625 in revenue. Other significant sources of revenue include late fees for attorneys who fail

substantially increased the number of online filers, with approximately 73% of plenary attorneys filing online in 2012, up from 44.8% in 2011. The discount for online registration also contributed to the reduction in the reserve. Because it served its purpose and marketing efforts are likely to continue to prompt online registration, the DOC does not recommend continuing the discount.

to timely register (\$280,000), prior year assessments that attorneys failed to pay (\$375,000), and the recovery of the costs of disciplinary investigations and proceedings from attorneys disciplined for unethical conduct (\$200,000).

Conclusion

The DOC has reviewed and discussed each category of the proposed 2013 budget, and it believes that the budget's recommended \$135 annual assessment and the funding for IT improvements and other programs promote fiscal responsibility while expanding and improving services to the public and the bar.

The DOC respectfully requests that the Court permit the publication of this letter and the Budget Overview. The DOC recommends that, following the comment period, the Court approve the 2013 Attorney Discipline Budget, as proposed.

Respectfully Submitted,

/s/ Michael K. Furey

Michael K. Furey, Esq.
Chair

MKF/ch

Enclosures

Cc: Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director
of the Administrative Office of the Courts
Mark Neary, Esq., Clerk, Supreme Court
Gail G. Haney, Esq., Deputy Clerk, Supreme Court
Disciplinary Oversight Committee
Shelley R. Webster, Director, Mgmt. & Adm. Svcs.
Linda McAdams, Ass't Chief, Mgmt. & Admin. Svcs.
Julianne K. DeCore, Esq., Chief Counsel, DRB
Charles Centinaro, Esq., Director, OAE
Paula Granuzzo, Esq., Statewide Coordinator
Susan Fleming, OAE

2013 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years (@ \$135)	\$	9,112,500	
Practicing 2 years (@ \$25)		75,000	
Total Registration Fees		\$	9,187,500

Other Fees

Prior Year Payments		375,000	
Fee Arbitration Filing Fees		80,000	
Interest on Funds		11,500	
Disciplinary Costs Recovered		200,000	
In-House Counsel		158,625	
Pro Hac Vice Fees		769,500	
Multi-Jurisdictional Practice		30,375	
Reinstatement Fees		82,500	
Late Fees		280,000	
Other Revenue		3,000	
Total Other Fees		\$	1,990,500

Total Projected Revenues 2013		\$	11,178,000
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EXPENSES:

Salaries & Benefits:

Salaries at 98%	\$	7,035,244	
(Allows for 2% vacancy rate)			
Fringe Benefits at 43.8%	\$	3,061,084	
Total Salaries & Benefits		\$	10,096,328

Operating Expenses:

OFFICE EXPENSE		826,569	
HEARING FEES		206,200	
OTHER EXPENSES		133,898	
MAINTENANCE & FIXED EXPENSES		399,748	
SPECIAL PURPOSE		1,060,874	
Emoluments	539,500		
Contingencies	10,000		
Attorney Registration Costs	511,374		
EQUIPMENT		74,500	
Total Operating Expenses		\$	2,701,789

Total Projected Expenses 2013		\$	12,798,117
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Revenues Less Expenses 2013		\$ (1,620,117)
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ADD: Reserve, End of 2012		\$ 3,996,550
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Reserve, End of 2013		\$ 2,376,433
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18.6%