

NOTICE TO THE BAR

Re: Proposed 2012 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2012 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 2012 Attorney Discipline Budget be published for comment.

Those seeking to comment should do so in writing by November 18, 2011, 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 21, 2011

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

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October 11, 2011

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: 2012 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 2012 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 Tony Guacci, Co-Chair; Maureen Kerns, Esquire, Co-Chair; Mike Furey, Esquire; Paris Eliades, Esquire; Rich Sackin; Al Clark; and Dan Guadalupe, Esquire.

The Committee considered and approved the proposed 2012 budget at its meeting on September 14, 2011. This letter reflects the Committee's recommendations. The Committee requests the Court's review and approval to publish this letter and the 2012 Disciplinary Budget Overview sheet.² The Budget Reserve Projections through 2017 are also enclosed for the Court's consideration.

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed budget for 2012 is \$12,008,330. This represents an increase of approximately 8% over the projected actual expenses for 2011.

The reserve has climbed significantly since 2008, in part due to higher than expected staff vacancies, and it is projected to equal 36% of the actual 2011 expenses. As a result, the DOC unanimously recommends a one-time \$5 "rebate"³ in the annual attorney registration fee for 2012, reducing the fee from \$140 to \$135. Based on that \$135 registration fee, revenues in 2012 are projected to be \$11,030,725.⁴ The \$977,605 difference between the expense budget and revenue will be made up by reducing the reserve from its estimated 2011 total of \$4,022,150 to \$3,044,545.

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 The DOC describes the \$5 reduction as a "rebate" because that term was used by the DOC and the Court in 1997 (\$30 rebate from the set \$125 fee); 1998 (\$15 rebate from the \$125 fee); 1999 (\$20 rebate from the \$125 fee); 2000 and 2001 (\$30 rebate from the \$125 fee); and 2002 (\$10 rebate from the \$125 fee). These were "paper" rebates, with the attorneys paying a reduced fee. They were not refunds.

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.

The contribution from the reserve will comprise approximately 8% of the 2012 budget and is projected to reduce the reserve to approximately 25%.

II. Expenses.

A. Salaries and Benefits.

As noted, the proposed budget for all expenses in 2012 is \$12,008,330. Salaries and benefits typically constitute approximately 80% of the budget, and that pattern continues for 2012 with these expenses projected to cost \$9,583,617.

Determining a budget for salaries and benefits in 2012 has not been simple. Salaries for represented staff are established through negotiated labor contracts over which the OAE and DRB have no control. The current labor contract expires on June 30, 2012. Because no labor contract exists for the second half of the 2012 budget year, the Office of Management and Administrative Services projected a 2% salary increase for that portion of the year; however, actual salary adjustments may vary significantly from these projections once the labor contracts are finalized.

An additional factor in preparing a budget for salaries is the anticipated vacancy rate among disciplinary staff. This figure contemplates the loss of staff due to retirements, terminations, and resignations. Unless vacancies are factored into the budget for salaries and benefits, more funds are budgeted for this expense than are actually used. Because salaries and benefits comprise such a large percentage of the budget, underestimating the number of vacant positions and the time period those positions remain vacant has contributed to an increase in the level of the reserve as a result of unspent budgeted funds.

Since 2005, the DOC has applied a 2% vacancy rate when calculating salaries and benefits. This year, however, after learning that the average of the variance between the actual and budgeted salaries for the past five years is 5%,⁵

⁵ The variance between actual and budgeted salaries in recent years was 5% in 2008, 10% in 2009, 5% in 2010, and an anticipated 6% in 2011. In part, these rates reflect the State's Early Retirement Incentive Program in 2008 and

and after being informed by Mr. Centinaro that the OAE expects more retirements in 2012, the DOC voted unanimously to apply a 5% vacancy rate in 2012 to the OAE's approximately 80% portion of this expense to ensure a more accurate estimate. Although the Budget Reserve Projection sheet provided to the Court reverts to a 2% vacancy rate in its projections for 2013 to 2017, the DOC determined also that it will review the known impending retirements and vacancies each year during the DOC's budget review process to determine whether it is reasonable to apply the traditional 2% vacancy rate.⁶

For 2012, applying the adjusted vacancy rate results in a budget for salaries totaling \$7,010,495, up from a projected \$6,567,634 actually spent in 2011. In addition to the vacancy rate, the 2012 budget for salaries reflects the remaining 4% raise included in the current labor contract, plus an estimated 2% raise that may or may not occur in the latter half of 2012 under any new negotiated contract.⁷

With regard to benefits, the Office of Management and Budget estimates an increase for all state employees to 36.79% of salary costs for 2012, although the actual rate will not be finalized until December. (This figure excludes workers' compensation contributions.) Based on this estimated rate, the 2012 budget for benefits is \$2,573,121—a 6% increase over 2011's projected \$2,416,233.

pension and benefits legislation in 2011. On the other hand, the variances during the three years prior to 2008 were .3% in 2007, 3% in 2006, and 2% in 2005.

⁶ The Division of Pensions presently is requesting that employees announce their intentions four or five months ahead of their retirement dates.

⁷ Judiciary managers, including managers in the DRB and OAE, are not covered by the labor agreements that provide for employee salary increases. The 2012 discipline budget includes monies for potential salary increases for managers; however, not all budgeted increases may be awarded.

B. Other Notable Expenses.

Aside from salaries and benefits, the only major increase in expenses for 2012 is for improvements to information technology (IT). As discussed in last year's budget report, the OAE began a three-year project in 2011 to improve its IT environment through infrastructure and software upgrades. The total cost for this initiative over three years will be approximately \$400,000. The amount budgeted in 2012 for this expense is \$185,500.

The DRB also is implementing an enhancement to its intranet and document management systems, including exploring electronic filing. \$50,000 is budgeted for these upgrades in 2012, with another \$50,000 planned in 2013.

C. American Bar Association Report.

A consultation team from the American Bar Association's Standing Committee on Professional Discipline evaluated New Jersey's disciplinary system in 2011. The Committee's July 2011 report, entitled "New Jersey: Report on the Lawyer Discipline System," offered numerous recommendations that ranged from increasing public education on the attorney disciplinary process to systematic changes that would require hiring a substantial number of new staff, particularly in the Office of Attorney Ethics. Because the public comment period for this report, which was published on the judiciary's website, ended only recently, these recommendations have not yet been addressed by the Court. For this reason, the 2012 disciplinary budget does not provide any funding to implement these proposals. In fact, without knowing which, if any, of the proposals the Court might decide to adopt, it would be impossible to include them in this budget.

III. The Annual Assessment and the Reserve.

As discussed in further detail in the section on Revenue Projections, the DOC recommends that the Court reduce the annual assessment fee from the \$140 paid during the past three years to \$135 for 2012. The \$5 reduction would be the result of a one-year rebate, rather than a permanent decrease in the fee, and the DOC would review the status of the reserve during its budget process next year to decide whether the rebate should continue. The \$5 rebate necessarily will result in reduced revenue in 2012.

The difference between the 2012 budget for expenses (\$12,008,300) and projected revenue at the \$135 fee level (\$11,030,725), is \$977,605, or 8% of the budget, which must be taken from the reserve.

The reserve has steadily climbed since 2009, when the annual assessment was increased from \$126 to \$140. Presently, the reserve is extraordinarily high. At the end of 2011, the reserve is projected to total \$4,022,150, or 36% of the actual 2011 expenses. Between 2003 and 2009, the DOC recommended maintaining a 5% reserve. In 2009, due to the state of the economy, the DOC decided that a conservative 10% reserve would provide a more-than-sufficient cushion to address unforeseen events. Having far outstripped these targets, the DOC believes that it is not reasonable to permit the reserve to continue growing.

The DOC projects that with a \$135 fee in 2012 and pulling funds from the reserve to make up the difference in revenue, the reserve will drop to 25% by the end of 2012. Because of the uncertainty in estimating the salary and benefits portion of the 2012 budget and the possibility that at least some salaries may remain flat, rather than increasing as the budget anticipates, the reserve may not be reduced to 25%, although there should be some drop, and the \$5 rebate may be appropriate in 2013 as well.

With or without the \$5 rebate, New Jersey's annual assessment is reasonable in relation to other states. For 2011, New Jersey's fee ranked 38th in the nation, after factoring out differences such as the mandatory malpractice insurance fees that some other states impose.

IV. Revenue Projections.

Based on an annual assessment of \$135, total revenue projected for 2012 is \$11,030,725. This is a 2% decrease from the projected actual revenue for 2011, or \$265,775. For 2012, it is estimated that 66,500 attorneys practicing between three and 50 years will pay the fee--an increase of 1,000 attorneys over the latest estimate for 2011. It is expected that 2,900 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 2011 (2,750). Total receipts from plenary admitted attorneys paying the registration fee are projected to be \$9,050,000, or 82% of revenue.

Pro hac vice fees are estimated to be paid by 5,700 attorneys in 2012, generating \$769,500 or approximately 7% of all revenue. Approximately 1,060 attorneys are projected to pay the fee to be licensed as in-house counsel in 2012, generating \$143,100 in revenue. Other significant sources of revenue include prior year payments by attorneys seeking reinstatement after being declared ineligible to practice for failing to pay the annual attorney registration fee (\$375,000), late fees (\$285,000), and the recovery of the costs of disciplinary investigations and proceedings from attorneys disciplined for unethical conduct (\$200,000).

V. Projecting Expenses and Revenue in Future Years.

Two years ago, the DOC increased its projections for future budgets from four years to five years in an effort to predict the level of the reserve for those years and, because they are related, the amount that would need to be charged for the annual attorney assessment. It has become apparent to the DOC, however, that there are too many variables and unknowns that have rendered these predictions unreliable the further into the future they are made. As discussed above, even items that might seem relatively predictable, such as the salaries and benefits that constitute 80% of each year's budget, can be difficult to estimate, especially in today's economic environment. Attempting to determine whether increasing or decreasing the annual assessment for the coming budget year by predicting the disciplinary system's needs three, four, or five years into the future has been generally unsuccessful, as demonstrated by the continually growing reserve despite the DOC's efforts to bring it down to targeted levels.

For this reason, the DOC suggests that the focus of the budget review process each year should be primarily on the upcoming budget year, and that projections into the future be limited to two additional years, rather than the present five. By projecting so far into the future and using conservative projection techniques, the DOC has found these future projections to be meaningless and even misleading. For example, the budget reserve projections provided for in the 2007 disciplinary budget predicted that the annual attorney assessment fees in 2010 and 2011 should be \$164 and \$172, respectively, to maintain a 5% reserve. For 2009, the projections estimated that the registration fees in 2012 and 2013 should be \$170 and \$178,

respectively, in order to maintain a 5% reserve. As a practical matter, the Court and the DOC should assess the registration fees on an annual basis anyway. The DOC seeks the Court's advice as to how far into the future the Court wants it to project the budget.

Conclusion

The DOC has reviewed and discussed each category of the proposed 2012 budget and believes that it represents a balanced approach to fiscal responsibility. In particular, the DOC believes that the high level of the reserve warrants a \$5 rebate from the \$140 annual assessment fee charged during the last three years.

We respectfully request 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 2012 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

1.1 2012 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years (@ \$135)	\$ 8,977,500
Practicing 2 years (@ \$25)	72,500
Total Registration Fees	\$ 9,050,000

Other Fees

Prior Year Payments	375,000
Fee Arbitration Filing Fees	85,000
Interest on Funds	18,000
Disciplinary Costs Recovered	200,000
In-House Counsel	143,100
Pro Hac Vice Fees	769,500
Multi-Jurisdictional Practice	30,375
Reinstatement Fees	72,250
Late Fees	285,000
Other Revenue	2,500
Total Other Fees	\$ 1,980,725

Total Projected **Revenues** 2012 **\$ 11,030,725**

EXPENSES:

Salaries & Benefits:

Salaries	\$ 7,010,495
(Allows for 5% vacancy rate for OAE)	
Fringe Benefits at 36.79%	\$ 2,573,121
Total Salaries & Benefits	\$ 9,583,617

Operating Expenses:

OFFICE EXPENSE	660,950
HEARING FEES	159,000
OTHER EXPENSES	118,575
MAINTENANCE & FIXED EXPENSES	382,488
SPECIAL PURPOSE	1,032,500
Emoluments	539,500
Contingencies	10,000
Attorney Registration Costs	483,000
EQUIPMENT	71,200
Total Operating Expenses	\$ 2,424,713

Total Projected **Expenses** 2012 **\$ 12,008,330**

Revenues Less Expenses 2012 \$ (977,605)

ADD: Reserve, End of 2011 **\$ 4,022,149**

Reserve, End of 2012 **\$ 3,044,545**

25.4%