

NOTICE TO THE BAR

Re: Proposed 2008 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2008 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 2008 Attorney Discipline Budget be published for comment.

Those seeking to comment should do so in writing to me by November 15, 2007, at the following address:

Clerk of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Stephen W. Townsend, Esq.
Clerk of the Supreme Court

Dated: October 3, 2007

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

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September 27, 2007

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: 2008 Attorney Disciplinary Budget

Dear Chief Justice Rabner and Associate Justices:

The Supreme Court's Disciplinary Oversight Committee (DOC), in consultation with the Administrative Office of the Court's Office of Management and Administrative Services, has reviewed the proposed attorney disciplinary budget for the calendar year 2008, which was jointly prepared and submitted by the Disciplinary Review Board (DRB) and Office of Attorney Ethics (OAE). The Committee would like to thank Julianne DeCore, Esq., Chief Counsel of the DRB, David E. Johnson, Jr., Director of the OAE, and their staffs for their diligence in preparing the proposed budget. The hard work of the Budget Subcommittee of the DOC is also appreciated, which was ably chaired by Raymond Ocasio and Anthony Guacci, two lay members.

The Committee considered and approved the proposed budget at its meeting on September 12, 2007. This letter constitutes the Committee's recommendations with respect to the proposed budget. It requests the Court's review and approval to publish this letter with an overview of the proposed budget, which appears on page two of the budget and is usually published in lieu of the entire budget document. We also enclose for the Court's consideration the Budget Reserve Projections through 2012.

I. Overview.

The total proposed budget for 2008 is \$10,835,560. This represents an overall increase of 8% over the funding approved for 2007 (which was \$10,161,353 in the original 2007 budget submitted to the Court). Revenues are projected to be \$9,737,200, and expenses to be \$10,835,560. The shortfall will be offset by a reduction in the reserve from its latest estimated total of \$1,676,270 to \$577,910. The reserve will comprise approximately 5.3% of the total proposed budget bringing it more in line with the policy of achieving and maintaining a reserve of 5% of the overall budget.

The Committee has determined that the proposed budget will improve the quality of the attorney disciplinary system without imposing any additional costs to individual attorneys. The budget provides for the addition of a new attorney position at the OAE to assist the Statewide Coordinator with support to the 17 district ethics committees. These additional services will be provided without increasing the discipline portion of the annual registration fee, as discussed herein. Our attorney registration fee is one of the lowest in the country with New Jersey ranked 43rd on a survey of mandatory attorney licensing fees - - those imposed as a condition of licensure. The average licensure fee nationwide is \$315, compared to New Jersey's total annual registration fee of \$186, despite the fact that New Jersey is ranked seventh in the size of its attorney population.¹

New Jersey's disciplinary system is unique in that it utilizes both a professional staff and many volunteers, both attorney and public members. These volunteers help to maintain the high standards of professional conduct for attorneys and their dedication of time and expertise, often unnoticed, helps defray the costs of the attorney disciplinary system and benefits the public and attorneys in this State.

A. Expenses.

The 2008 budget incorporates a 2% staff-vacancy rate, which was also the case in 2007. Salaries and benefits, therefore, are budgeted at an effective rate of 98% for the full year, which reflects the normal staff turnover and the time it takes to fill any vacancies.

¹ This survey was prepared by the OAE for the National Organization of Bar Counsel Inc. Oregon's licensure fee includes a charge for mandatory malpractice insurance of \$3,200. This malpractice portion of the license fee was not included in calculating the average fee nationwide.

As in past years, the greater portion of the expenses is attributable to negotiated salaries and benefits (\$8,589,671 or 79% of the total proposed budget). The remaining \$2,245,889 or 21% comprises operating expenses. The largest line-items under operating expenses include: fee/ethics secretarial emoluments of \$539,500 (5% of the total proposed budget), attorney registration costs at \$447,477 (4% of the total budget) and rent at \$293,438 (3% of the total budget).

B. Revenue.

The primary source of revenue for the attorney disciplinary system is the discipline portion of the attorney registration fee. For 2008, it is estimated that 60,000 attorneys will pay the fee imposed on attorneys practicing between three and 50 years, an increase of 3% from the latest estimate for 2007; and 2,508 attorneys will pay the fee of \$25 for practicing two years or fewer, an increase of 7% over the latest estimate for 2007. Receipts from this portion of the registration fee are projected to be \$7,622,700 or 78% of revenues. In the last few years, two types of fees, *pro hac vice* fees and late-payment fees, have contributed to higher than anticipated revenues. *Pro hac vice* fees are projected to comprise 8% of the revenues received in the upcoming year, while late-payment fees are estimated to be 3% of revenues. The trend toward higher revenue is due in part to an increase in the number of attorneys seeking *pro hac vice* admission. In 2002, 2,794 out-of-state attorneys were admitted *pro hac*; in 2006, 6,167 attorneys were admitted *pro hac*; and the latest estimate for 2007 is that 5,800 attorneys will be admitted *pro hac vice*. For this proposed budget, it is estimated that 6,500 attorneys will be admitted *pro hac* with an expected income of \$819,000.

In-house counsel fees are another relatively new source of revenue. The Lawyers' Fund for Client Protection issued bills to 1,223 attorneys for these in-house license fees in June 2007. This budget estimates conservatively that 1,000 in-house counsel will pay the \$126 discipline portion of the annual registration fee in 2008, generating revenues of approximately \$126,000.

II. Registration Fee/Reserves.

The Committee is pleased that under the proposed budget the attorney-discipline portion of the registration fee for attorneys admitted between three and 50 years will remain at \$126. Attorneys admitted for only two years will continue to pay \$25. This represents the fourth consecutive year that the registration fee will remain at the \$126 and \$25 levels, respectively, and represents a reduction of \$8 from the fee paid in 2004 by

attorneys practicing between three and 50 years. The current fee represents not only a real-dollar reduction, but an even greater savings when adjusted for inflation.² The OAE and DRB have accomplished this through substantial cost-containment efforts and operating efficiencies. Since the 2003 budget, when the DOC recommended a "pay-as-you-go" approach to the disciplinary system budget, the annual attorney registration fee has been based on the actual costs of administering the attorney disciplinary system on a year-to-year basis with a zero-based budget, which requires that each budgetary item be justified anew rather than presuming that the prior year's allocation should be maintained or increased. This approach also requires careful analysis of the interplay between the reserve amount and the amount charged for the discipline portion of the attorney registration fee.

Consideration was given to the depletion of the reserves and the resulting increase on the projected amount of the registration fee for each of the subsequent years through to 2012. The registration fee is projected to increase to \$153 in 2009, with estimated increases annually to cover inflation, primarily in salaries and benefits, to \$178 by 2012. The Committee is mindful, however, that the budget reserve projections for 2009 through 2012 are based on estimates of revenues and expenses, which by their very nature may be subject to unknown variables, notwithstanding the best efforts of the professional staff and the DOC in developing reasoned, conservative estimates. Last year, for example, the discipline portion of the registration fee for 2008 was projected to increase to \$146 with the reserve decreasing to \$766,163 at the beginning of 2008, when in fact the fee will remain constant and the reserve at the start of the year is now projected to be \$1,676,270.

The Committee explored the advantages and disadvantages of increasing the registration fee this upcoming year in order to bolster the reserves to prevent a large percentage increase in the registration fee for 2009. Apprehension about a large increase was tempered by several factors, however. First, the Committee believes its policy of pay-as-you-go is fair in that the current-year budget reflects the true costs of administering the disciplinary system. Only practicing attorneys are funding the system on a year-to-year basis. Second, although the Committee believes this budget provides a realistic projection of revenues and costs, experience shows that revenues often exceed the projections while the reverse is true of expenses. As a

² If the fee had been adjusted for inflation at a rate of 4% since 2004 (when it was \$134), by year 2008 the fee would have been \$157 rather than the actual fee of \$126.

result, it is possible that the reserve at year-end 2007 may be higher than projected. Third, the latest projection of the 2007 year-end reserve is \$1,676,270, which is 16.6% of the 2007 budget. Even though this is consistent with a downward trend in the reserve, if the registration fee were increased for 2008, the reserve would likely exceed the Court-approved goal of maintaining the reserve at approximately 5% of the budget.

The Committee cautions the Court and members of the bar that there remains the real possibility of a significant increase in the registration fee in 2009, based on the current reserve projections and the assumptions used to generate them. These projections predict that the registration fee could as high as \$153 in 2009, a 21% increase. As always, the Committee reviews revenues and expenses on a quarterly basis, if not more frequently, and will continue to make the necessary adjustments to policies and practices to ensure sound management and fiscal responsibility.

III. New Budget Initiatives.

The OAE requested funding for four new initiatives this year, all of which were considered carefully by the DOC. These initiatives were: 1) a new administrative assistant for the Statewide Coordinator; 2) an increase in the emoluments for secretaries of district ethics committees; 3) a \$49,000 computer enhancement needed because of the division of District X Ethics Committee into two district ethics committees; and 4) an increase for temporary help for the OAE's scanning program. In considering these initiatives, the Budget Subcommittee of the DOC sought to maintain the appropriate reserve as well as the high quality of service provided by the OAE and DRB to the public and the attorneys of the State, all pursuant to a zero-based budget.

A. New Attorney Position.

The OAE requested the addition of an administrative specialist to assist the Statewide Ethics Coordinator in supporting the seventeen district ethics committees, which handle more than half of the attorney-ethics investigations in New Jersey. This position was first sought by the OAE in the 2007 proposed budget, but was not approved by the DOC and was subsequently omitted from the final 2007 budget. Subcommittee members deliberated about whether this proposed position directly addressed the needs of the district ethics committees, some of which have had difficulty in complying with the time goals set forth in R. 1:20-8. This Rule contemplates that standard ethics investigations will be completed within six months from the date a grievance is docketed, and hearings will be completed within six

months from the expiration of the time for answering the complaint.

The consensus of the subcommittee was that additional administrative staff would not improve the district ethics committees' backlog issues. Based on their discussions with officers of eleven district ethics committees, subcommittee members determined that the Statewide Coordinator provided support that helped the struggling committees reduce their backlogs. Therefore, subcommittee members concluded that the attorney disciplinary system would be best served by hiring an additional attorney to support the district ethics committees. If approved, the primary focus of this new position would be to share the Statewide Coordinator's workload and address the backlog of investigations in the struggling districts. In partnership with the Statewide Coordinator, this new attorney would provide valuable additional support to the district ethics committees. Day-to-day responsibilities would include attending district ethics committees meetings, responding to inquiries from district ethics committee members and officers, following-up with investigators, providing assistance with legal research, transferring cases between districts or to the OAE for reassignment due to conflicts or excessive caseload and addressing the public's concerns regarding the status, dismissal or non-docketing of grievances. Other duties would include oversight of the member and officer appointment process, training for district ethics committee members, providing backup for the Statewide Coordinator, and furthering OAE liaisons with the district ethics committees. The subcommittee's recommendation was shared with the OAE for its consideration. The OAE incorporated this proposal into the revised budget, which included the new attorney position. Following the subcommittee's recommendation for this new attorney position, the DOC endorsed it.

B. Increase in Secretarial Emoluments for District Ethics Secretaries.

The Committee also approved the OAE's request for an increase in the yearly ethics emolument paid to district ethics committee secretaries. Emoluments are payments made to district ethics committee secretaries "to reimburse the secretary for costs and expenses." R. 1:20-3(c). The emolument is not to compensate the district ethics committee secretary for his or her time. The proposed increase is \$2,500 for a total increase of \$50,000.³ Each emolument would be \$17,000 per year, up from \$14,500 received now - - a 17% increase. The emolument was last

³ Certain district ethics secretaries in high-volume districts receive more than one emolument.

increased in 1997, ten years ago. In a survey of the district ethics committee secretaries conducted by the OAE, the majority reported that their out-of-pocket expenses are higher than what they received as an emolument. The Committee was in accord that district ethics committee secretaries should not be using their own money to perform their duties and deserved an increase after ten years. The Committee also hoped this increase would help retain qualified district ethics secretaries and bolster morale.

C. Computer Costs Associated With Splitting District X Ethics Committee Into Two District Ethics Committees.

Recently, the Court approved the division of the District X Ethics Committee, which covers Morris and Sussex counties, into two committees because of its size and heavy caseload. District X will be divided into District XA and District XB in a way that allocates the attorney population evenly between the districts. This division will require a modification to the ethics computer system at an estimated cost of \$49,000.⁴ This enhancement includes system analysis, program coding, documentation, program testing, installation and testing. It will also include a program design to facilitate any future districts with no additional programming costs.

D. Temporary Services Increase.

The OAE requested an additional \$10,000 to scan its files. Rather than hiring a full-time employee, the OAE proposed to hire help for two days a week paid on an hourly basis. This was approved by the DOC. This increase is in addition to the \$10,000 budgeted for hourly help to scan attorney registration information.

Conclusion

The DOC carefully reviewed and discussed each component of the proposed budget and concluded that it is fair and reasonable and represents a balanced approach to fiscal economy, efficiency, and responsibility. Both the OAE and DRB have instituted effective cost controls and have sought to continue the vital work of the disciplinary system at or below budget. The Committee policy of a zero-based budget requires that all expenses be justified each year, and the Committee is confident that this proposed budget achieves that end. Of course, there may be

⁴ This enhancement is needed because all reports generated by the OAE use a docket number, which begins with the number of the district where the matter originated. Every program module in every computer application must be modified to recognize these newly numbered districts.

variables that are difficult to project. The Committee will continue its regular review and will apprise the Court of any developments.

The Committee is pleased to present this Budget to the Court and applauds the work and dedication of the professionals and volunteers serving the disciplinary system. The Committee respectfully recommends that the Court approve the 2008 Attorney Discipline Budget, as proposed.

Respectfully Submitted,

Lanny S. Kurzweil, Esq.

LSK/KAH

Enclosures

Cc: Disciplinary Oversight Committee
Hon. Philip S. Carchman, Director, AOC
Stephen W. Townsend, Esq., Clerk, Supreme Court
Gail G. Haney, Esq., Deputy Clerk, Supreme Court
Christina P. Higgins, Director, Mgmt. & Adm. Svcs.
Shelley Webster, Asst. Dir., Mgt. Svcs.
Julianne DeCore, Esq., Chief Counsel, DRB
David E. Johnson, Jr., Esq., Director, OAE
John J. Janasie, Esq., First Asst. Counsel, OAE
Paula Granuzzo, Esq., Statewide Coordinator
Susan Fleming, OAE

2008 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 50 years (@ \$126)	\$ 7,560,000
Practicing 2 years (@ \$25)	62,700
Total Registration Fees	\$ 7,622,700

Other Fees

Prior Year Payments	250,000
Fee Arbitration Filing Fees	85,000
Interest on Funds	280,000
Disciplinary Costs Recovered	150,000
In-House Counsel	126,000
Pro Hac Vice Fees	819,000
Multi-Jurisdictional Practice	25,000
Reinstatement Fees	75,000
Late Fees	300,000
Other Revenue	4,500
Total Other Fees	\$ 2,114,500

Total Projected **Revenues** 2008 \$ 9,737,200

EXPENSES:

Salaries & Benefits:

Salaries at 98% (Allows for 2% vacancy rate)	\$ 6,494,165
Fringe Benefits at 32.31% (7.65% for P/T and O/T)	\$ 2,095,506
Total Salaries & Benefits	\$ 8,589,671

Operating Expenses:

OFFICE EXPENSE	415,724
NEW SYSTEM	100,000
HEARING FEES	152,000
OTHER	515,638
EQUIPMENT	75,550
EMOLUMENTS	539,500
ATTORNEY REGISTRATION COSTS	447,477
Total Operating Expenses	\$ 2,245,889

Total Projected **Expenses** 2008 \$ 10,835,560

Revenues Less Expenses 2008 \$ (1,098,360)

ADD: Reserve, End of 2007* (See Page 3) \$ 1,676,270

Reserve, End of 2008 \$ 577,910

5.3%