

NOTICE TO THE BAR

Proposed 2020 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2020 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 2020 Attorney Discipline Budget be published for comment. Those documents are attached.

Please send any comments in writing by Monday, November 4, 2019 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 8, 2019

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

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September 23, 2019

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: 2020 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 2020 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. The Committee respectfully requests the Court's approval for publication of the Budget Report and the 2020 Disciplinary Budget Overview (page 6). Included among the enclosures are budget reserve projections through fiscal year 2022. As discussed below, the Committee recommends that the disciplinary system component of the attorney registration fee remain at \$148 for 2020.

The 2020 budget was prepared in consultation with the Administrative Office of the Court's Office of Management and Administrative Services ("OMAS"). The Committee greatly appreciates the assistance and guidance of OMAS Director Shelley Webster and Assistant Chief Linda McAdams. The Committee is especially thankful to Charles Centinaro, Esq., Director of the Office of Attorney Ethics ("OAE"); Barbara Galati, Chief, Random Audit Compliance Program; Robert Guay, OAE Administrator; Ellen Brodsky, Esq., Chief Counsel of

the Disciplinary Review Board (“DRB”); and the staffs of the OAE and DRB. The budget before the Court reflects their careful planning and hard work.

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 2020 budget is \$13,015,754, representing a 4.6% decrease from the budget approved for 2019. 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 \$157,497 or approximately 2% when compared with the latest estimate for 2019. The fringe benefit rate (FBR) is projected to be 45.15%, a decrease of 7.2% from the rate used in the 2019 budget. Overall personnel costs for 2020, including salaries and fringe benefits, are expected to increase by approximately 2.0% when compared to the latest estimate for 2019.

As discussed in Section III, the DOC is recommending that the disciplinary system component of the 2020 fee assessment remain the same as in 2019: \$148 for plenary admitted attorneys practicing three to forty-nine years. As explained in Section IV, that registration fee is projected to generate revenues of \$10,360,000.² Attorneys practicing two years or less pay \$25, yielding another \$40,000. Thus, total revenues from plenary admitted attorney registration fees are anticipated to be \$10,400,000. When other fees are added from In-House Counsel, Pro Hac Vice, and other revenue sources (\$2,278,250), total projected revenues for 2020 are estimated to be \$12,678,250.

With total projected revenues of \$12,678,250 and total expenses of \$13,015,754, there will be a budgeted deficit for 2020 of \$337,504. There was a budgeted deficit of \$623,204 in 2019, but the latest estimate shows a deficit of \$339,088. At the end of 2019, the reserve is projected to be \$3,624,592 or 28.1%

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

² 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.

of the budget. For the four-year period from 2014 to 2017, actual reserves have averaged approximately 29%. The reserve at the end of 2020 is projected to be \$3,287,088 or 25.3% of the operating budget. For 2021 and 2022, reserves are projected at 20.4% and 14.2%, 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 decrease by 7.2% for 2020, from the budgeted 52.35% to 45.15%. Based on available information, salary costs for 2020 are projected at \$7,340,126 (a 2% increase when compared to the latest estimate for 2019) and benefits are projected at \$3,297,005 (a 1.5% increase from the latest estimate for 2019).³ Thus, salaries and benefits for 2020 are projected to be \$10,637,131 (86 full-time positions) or approximately 82% of the budget.

Since 2016, the Attorney Discipline Budget has featured a 3.5% vacancy rate. From 2005 to 2015, except for 2012 when there were an unusual number of planned retirements and a 5% rate was used, the vacancy rate was budgeted at 2%. The vacancy rate was discussed at length during Budget Subcommittee meetings and at the September full Committee meeting. Committee members and OMAS staff acknowledged that over the last five years the actual rate has averaged around 5%. Following a robust discussion, the Committee unanimously voted to use a 5% vacancy rate for the 2020 budget.

B. Operating Costs.

Operating expenses for 2020 total \$2,378,623 or approximately 18% of the budget, representing a 3.4% decrease from the latest estimate for 2019. When compared to the latest estimate for 2019, some budget categories remain the same, including library, postage, and shorthand reporters. Some categories will experience slight increases, for example travel (3%), data processing (3%), and office rental (3%). While a few categories appear to exhibit significant increases when compared to the latest estimate, for example "Attorney Trustees" and "AG Representation," the proposed amounts are the same as those approved for 2019.

³ Salaries for represented staff in the disciplinary system are established through negotiated labor contracts, which will expire on June 30, 2020. As of the writing of this Budget Report, these contracts have yet to be renegotiated and ratified.

Following are some particular expenses worth noting:

- **Conferences/Education/Training:** The National Organization of Bar Counsel weeklong training program is offered only on odd-numbered years. Therefore, the OAE is requesting \$9,000 less in this category.
- **Attorney Registration Costs:** This budget category will experience a significant decrease (-28% when compared to the latest estimate) as a result of the Supreme Court's approval of a service fee, charged to attorneys who pay using a credit card.
- **Hearing Expenses:** The OAE is requesting \$15,000 more in this category due to an increasing number of complaints and hearings over the last five years. In addition, an additional \$10,000 is being requested for "Special Hearing Fees." Special Ethics Masters are now paid for time spent writing their opinions. R. 1:20-6(b)(2).
- **Maintenance and Fixed Expenses:** The OAE is requesting funding for re-carpeting of its offices and for protective window filming, a security measure. This expense is offset by the now completed DRB cabinet replacement project (a one-time expense).

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

III. The Annual Assessment and the Reserve.

The annual assessment and year-end reserve were discussed during Budget Subcommittee meetings and at the September 11, 2019, full Committee meeting. The Committee discussed at length the high year-end reserve. Over the years, Paris P. Eliades, Esq., the Bar Association's representative on the Committee, has expressed concern over the reserve level. Mr. Eliades engaged the Committee in a full discussion on the matter, pointing out in particular that – over the years – budget reserve projections have not materialized.

The OAE and DRB always strive to keep expenses reasonable, understanding that some expense variables, in particular 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 decrease from 52.35% to 45.15%. The rate is subject to negotiations with the federal government, which are ongoing, and is usually finalized towards the end of the year. Moreover, as in the past, the 2020 budget features a deficit that is anticipated to further reduce the reserve. If the projections bear out, using a 5% vacancy rate, the reserve is projected to be 14.2% at the end of fiscal year 2022.

At the Committee's September meeting, Mr. Eliades moved for a reduction of the attorney registration fee from \$148 to \$143. The Committee voted six to four against the motion. The DOC, therefore, recommends that the annual assessment remain at \$148, where it has been for the last six years. As is the case every year, New Jersey's annual assessment is reasonable in relation to other states.⁴ With the registration fee remaining at \$148, the reserve is projected to decrease from \$3,624,592 or 28.1% of the budget, the latest estimate for 2019, to \$3,287,088 or 25.3% of the operating budget for 2020. It is estimated that, should the registration fee remain at \$148 for 2021 and 2022, reserves will decrease to 20.4% and 14.2% respectively, approaching the Committee's goal of 10%.

IV. Revenue Projections.

Based on an annual assessment of \$148, the total revenue projected for 2020 is \$12,678,250. This is a 1% increase (\$124,380) from the latest estimate for 2019. However, it represents a 2.7% decrease (\$347,052) from the 2019 approved budget. It is estimated that 70,000 attorneys practicing three to forty-nine years will pay the \$148 fee while 1,600 attorneys practicing two years or less will pay the \$25 fee.⁵ Thus, total receipts from plenary admitted attorneys paying the registration fee are projected to be \$10,400,000, or approximately 82% of revenue.

Pro hac vice fees are estimated to be paid by 6,350 attorneys in 2020, generating \$939,800 or approximately 7.4% of all revenue. Approximately 1,285 attorneys are projected to pay for in-house counsel licenses in 2020, generating \$190,180 in revenue. Other significant sources of revenue include late fees for attorneys who fail to register in a timely manner (\$265,000), prior years' assessments that attorneys failed to pay (\$275,000), 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 proposed 2020 Attorney Discipline Budget. The

⁴ 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 2, and is in the middle of the pack in relation to the eighteen "voluntary" states, which do not require mandatory bar association membership or impose malpractice insurance fees. Of those states with lower registration fees, only one state (New York) regulates more attorneys than New Jersey.

⁵ For 2019, it was projected that 72,000 attorneys would pay \$148 and 1,700 would pay \$25.

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 as a whole. The Committee is particularly proud of all the 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 2020 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
Shelley R. Webster, Director, Mgmt. & Admin. Svcs.
Linda McAdams, Ass't Chief, Mgmt. & Admin. Svcs.
Ellen Brodsky, Esq., Chief Counsel, DRB
Charles Centinaro, Esq., Director, OAE
Isabel McGinty, Esq., Statewide Ethics Coordinator, OAE
Robert Guay, Office Administrator, OAE

1.1 2020 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years @	70,000	\$148	\$	10,360,000
Practicing 2 years @	1,600	\$25	\$	40,000
Total Registration Fees				\$ 10,400,000

Other Fees

Prior Year Payments	\$	275,000
Fee Arbitration Filing Fees	\$	53,000
Interest on Funds	\$	164,750
Disciplinary Costs Recovered	\$	300,000
In-House Counsel	\$	190,180
Pro Hac Vice Fees	\$	939,800
Multi-Jurisdictional Practice (115)	\$	17,020
Reinstatement Fees	\$	70,000
Late Fees	\$	265,000
Other Revenue	\$	3,500
Total Other Fees		\$ 2,278,250

Total Projected Revenues 2020

\$ 12,678,250

EXPENSES:

Salaries & Benefits:

Salaries with capacity @	96.5%	\$	7,340,126
Allows for vacancy rate @	5.0%		
Fringe Benefits @	45.15%	\$	3,297,005

Total Salaries & Benefits **\$ 10,637,131**

Operating Expenses:

OFFICE EXPENSE	\$	585,567
HEARING FEES	\$	201,000
OTHER EXPENSES	\$	165,150
MAINTENANCE & FIXED EXPENSES	\$	411,200
SPECIAL PURPOSE	\$	942,706
Emoluments	\$	539,500
Contingencies	\$	7,500
Attorney Registration Costs	\$	395,706
EQUIPMENT	\$	73,000

Total Operating Expenses **\$ 2,378,623**

Total Projected Expenses 2020

\$ 13,015,754

Revenues Less Expenses 2020 **\$ (337,504)**

ADD: Reserve, End of 2019 **\$ 3,624,592**

Reserve, End of 2020 **\$ 3,287,088**

25.3%