

NOTICE TO THE BAR

PROPOSED 2024 ATTORNEY DISCIPLINE BUDGET – **COMMENTS REQUESTED BY NOVEMBER 22, 2023**

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 2024 Attorney Discipline Budget be published for comment. Those documents are attached.

Among other contents, the Committee recommends that the disciplinary system component of the annual attorney registration fee increase by \$28 for 2024 – from \$173 to \$201 – for a total attorney registration fee of \$267.

This anticipated increase was signaled through prior Notices to the Bar, which indicated that, after a period of study, the Court has determined to increase staffing at the Office of Attorney Ethics in measured ways to better protect the public, to preserve the integrity of the bar, and to support the work of its invaluable, 900-member volunteer corps. Specifically, the Court authorized the addition of staff to the Office of Attorney Ethics to enable more timely disposition of grievances, investigations, hearings, and subsequent proceedings. Through those prior Notices, the Court made clear that the addition of staff is a measure to alleviate unnecessary delays; it is not intended as a mechanism to increase the number of investigations or random audits. In fact, no new auditors or investigators were added as a result of the staffing review. Rather, the staff additions include attorneys and administrative support to handle the existing volume of cases more expeditiously.

Please send any comments in writing by Wednesday, November 22, 2023 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 by email to 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 23, 2023

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

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October 4, 2023

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

Re: 2024 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 2024 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 assessments, revenues, and reserve projections. Included among the enclosures are budget reserve projections through fiscal year 2025. The Committee respectfully requests the Court's approval for publication of the Budget Report and the 2024 Disciplinary Budget Overview. As discussed below, the Committee recommends that the disciplinary system component of the attorney registration fee increase by \$28 – from \$173 to \$201¹ for

¹ 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. In preparing the 2023 budget, the disciplinary component of the fee was \$175, including the \$2 designated for the BBE. In early 2023, the OAE was informed that the \$2 would be collected before the OAE received its portion of the fee. Thus, in 2024 and going forward, unless otherwise stated, any reference to the disciplinary component of the fee will not reflect the \$2 designated for the BBE.

2024 – for a total attorney registration fee of \$267, assuming the other components of the annual registration fee remain static.

The 2024 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 Fragé. The Committee is especially thankful to Johanna Barba Jones, Esq., Director of the Office of Attorney Ethics (“OAE”); Robert Guay, OAE Business and Legal Administrator; Timothy M. Ellis, Esq., Acting Chief Counsel of the Disciplinary Review Board (“DRB”); and the collective staff of the OAE and the DRB.

The Committee thanks its Budget Subcommittee, whose dedicated members worked diligently to ensure thoughtful review and analysis of the proposed budget.² The Committee also deeply appreciates 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 2024 budget is \$17,025,550, representing a 13.37% increase from the budget approved for 2023. As discussed in greater detail below (Section II(A)), the primary core expense is salaries and benefits, which comprises approximately 85% of the 2024 budget and 13.1% of the increase in the total budget. Salary costs are expected to increase by \$848,616, or 11.58%, when compared with the latest estimate for 2023.³ The fringe benefit rate (“FBR”) is projected to be 76.15% of salaries for full-time staff, an increase of 8.7% from the rate used in the 2023 budget. Overall personnel costs for 2024, including salaries and benefits, are expected to increase by approximately 16.52% when compared to the latest estimate for 2023.

As discussed in Section III, the DOC is recommending that the 2024 disciplinary system component of the annual attorney registration fee, exclusive of the \$2 designated for the New Jersey Board of Bar Examiners (“BBE”), increase by

² The Budget Subcommittee consists of Co-Chairs Matthew P. O’Malley, Esq. and James Kravitz, Esq., and members Jeralyn L. Lawrence, Esq., Thomas J. Reck, and Nora Poliakoff.

³ Current labor contracts will expire on June 30, 2024.

\$28 to \$201 for plenary admitted attorneys practicing three to forty-nine years. This component of the fee was increased by \$27 last year, following a nine-year period without an increase. The subsequent increase for the 2024 budget is largely attributable to the significant increase in the FBR, as well as a necessary expansion of personnel within the OAE.

As explained in Section IV, the \$201 disciplinary component of the registration fee, exclusive of the \$2 designated for the BBE, is projected to generate revenues of \$13,843,875 from attorneys practicing from three to forty-nine years.⁴ Attorneys practicing two years or less pay \$23 (less the \$2 designated for the BBE), yielding another \$36,225. Thus, total revenues from plenary admitted attorney registration fees are anticipated to be \$13,880,100. When other fees are added from In-House Counsel, Pro Hac Vice, and other revenue sources (\$2,734,622), total projected revenues for 2024 are estimated to be \$16,614,722.

With total projected revenues of \$16,614,722 and total expenses of \$17,025,550, there will be a budgeted deficit of \$410,828 for 2024. There was a budgeted deficit of \$413,754 in 2023, but the latest estimate shows a deficit of \$146,602. For the period from 2016 to 2022, actual reserves have averaged 27.83%. The reserve at the end of 2023 is projected to be \$1,940,141, or 13.2% of the operating budget. For 2024, the reserve is projected to be 9.0%. 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 2024 is projected to be 76.15%, an increase of 8.7% from the 2023 budgeted rate of 67.45%. Based on available information, salary costs for 2024 are projected at \$8,178,285 (11.58% higher than the 2023 latest estimate), and benefits are projected at \$6,227,764 (23.72% higher than the 2023 latest estimate).

⁴ The \$201 fee is for the disciplinary system only. Additional sums are collected for the BBE, the Lawyers' Fund for Client Protection, the Lawyers Assistance Program, and the Mandatory Continuing Legal Education Program.

Thus, salaries and benefits for 2024 are projected to be \$14,406,050 (95 full-time positions), or approximately 85% of the budget.

Following a leadership transition within the OAE and the DRB, the Court undertook an internal study of the staffing structure of the disciplinary system, ultimately accepting reorganization plans for both offices as recommended by the Administrative Director of the Courts. This reorganization and addition of staff within the OAE will allow for the more efficient processing of cases.⁵ For example, a new Budget and Operations Unit will perform the OAE's administrative and fiscal functions, freeing subject-matter experts to commit more of their time to case-related work.

From 2005 to 2015, the vacancy rate was budgeted at 2%.⁶ From 2016 to 2019, the Attorney Discipline 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 last year's budget cycle, which revealed an approximately 7% average vacancy rate over the past 10 years, the Committee voted to adopt a 7% rate for the 2023 budget. The 7% vacancy rate continues to be used for the 2024 budget.

B. Operating Expenses

Operating expenses for 2024 total \$2,619,500, or approximately 15% of the budget, representing a 10.88% increase over the latest estimate for 2023 and an 1.5% increase over the 2023 budget.

Notable operating expenses include the following:

- **Office Expenses:** Office expenses are estimated to be 13.73% higher than the latest estimate for 2023, but just 7% higher than the 2023 budget. This reflects an increase in expenses related to recruitment, library, postage,

⁵ See Notice to the Bar, "Supreme Court Determination on Staffing Needs for the Office of Attorney Ethics" (published August 4, 2023) (viewable at: <https://www.njcourts.gov/notices/notice-supreme-court-determination-staffing-needs-office-of-attorney-ethics>).

⁶ In 2012, there were an unusually high number of planned retirements, and a 5% vacancy rate was used.

travel, insurance, and data processing, while the remaining office expenses are budgeted lower for 2024. Specifically:

- Recruitment expenses have increased by \$6,750 over the 2023 budget due to the OAE's staffing growth and intention to continue to use advertising in order to obtain a pool of qualified candidates for each position.
- Library expenses have increased by approximately \$7,000 in light of the increased cost of the Gann Law book New Jersey Attorney Ethics by Kevin H. Michels, which is provided to each of the DEC volunteers at the time of their first appointment.
- Data processing expenses are expected to increase by approximately \$15,000 because of continued improvements and enhancements to systems that were put on hold during the pandemic.
- Other Expenses: Other expenses, including expenses for meetings and conferences/education/training, are budgeted to be 50% higher than the latest estimate for 2023 and 16.38% higher than the 2023 budget. This is due to plans to resume in-person DEC meetings and volunteer appreciation events, as well as the intent to send staff to the National Organization of Bar Counsel Litigation Skills training.
- Equipment Expenses: These expenses are budgeted to be 63.64% higher than the latest estimate for 2023 largely due to the implementation of the OAE 2024 laptop replacement plan.

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 2024, the OAE and the DRB proposed an increase of \$28 from \$175 to \$203, inclusive of the \$2 designated for the BBE, for a total attorney registration fee of \$267. Over the past several years, the FBR has increased significantly, causing a substantial reduction to the reserve.

Another significant increase (8.7%) is expected for 2024. Owing to this increase and the necessary addition of personnel at the OAE, the annual attorney registration fee must be increased in order to generate enough revenue to pay for the attorney discipline system while maintaining an appropriate reserve.

Of the 51 jurisdictions in the United States that charge an attorney registration fee, New Jersey ranks 40th with the current fee of \$239, with an average nationwide fee of \$347. At \$267, New Jersey would rank 36th in comparison to the other jurisdictions. New Jersey also ranks 11th lowest out of 18 states without a mandatory bar association membership requirement; only one state with lower fees regulates more attorneys.

For 2024, the DOC unanimously recommends that the disciplinary system component of the annual assessment increase by \$28, with the attorney discipline system receiving \$201. As detailed above, New Jersey's annual assessment remains reasonable in relation to other states. Despite the increase to the registration fee, in 2024 the reserve is projected to decrease from the 2023 projected reserve of \$1,940,141, or 13.2% of the operating budget, to \$1,529,313, or 9.0% of the operating budget.

IV. Revenue Projections

Based on an annual assessment of \$201, exclusive of the portion of the fee designated for the BBE, the total revenue projected for 2024 is \$16,614,722. This is a 13.96% increase (\$2,035,214) from the latest estimate for 2023. It is estimated that 68,875 attorneys practicing three to forty-nine years will pay the \$201 fee (975 less than projected for 2023), while 1,575 attorneys practicing two years or less will pay the \$23 fee (50 more than projected for 2023). Thus, total receipts from plenary-admitted attorneys paying the registration fee are projected to be \$13,880,100, or 83.54% of revenue.

Pro hac vice fees are estimated to generate \$1,195,950, while in-house counsel licenses are expected to generate \$236,175 in revenue. Other significant sources of revenue include late fees for attorneys who fail to timely register (\$250,000), prior years' assessments that attorneys failed to pay (\$270,000), and the recovery of the costs of disciplinary investigations and proceedings from disciplined attorneys (\$300,000).

V. **Conclusion**

The DOC is thankful to the staff of the OAE and the DRB for their diligent work in preparing and presenting the 2024 Attorney Discipline Budget. The Committee is confident that the budget is fiscally responsible and will provide the OAE and the 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.

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 2024 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
Matthew Kelly, Esq., Deputy Clerk and Chief Counsel, Supreme Court
Christine Muller, Deputy Clerk and Chief Administrator, Supreme Court
Demery Roberts, Esq., Deputy Chief Counsel to the Supreme Court
Todd McManus, Director, OMAS
Valerie Fragé, Assistant Director, Financial Services, OMAS
Timothy M. Ellis, Esq., Acting Chief Counsel, DRB
Johanna Barba Jones, Esq., Director, OAE
Jason D. Saunders, Esq., First Assistant Ethics Counsel, OAE
Robert Guay, Business and Legal Administrator, OAE

1.1 2024 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years @	68,875	\$201	\$	13,843,875
Practicing 2 years @	1,575	\$23		36,225
Total Registration Fees				\$ 13,880,100

Other Fees:

Pro Hac Vice Fees		\$	1,195,950
In-House Counsel			236,175
Multi-Jurisdictional Practice			19,497
Prior Year Payments			270,000
Disciplinary Costs Recovered			300,000
Fee Arbitration Filing Fees			37,000
Interest on Funds			350,000
Reinstatement Fees			72,000
Late Fees			250,000
Misc. Revenue			4,000
Total Other Fees			\$ 2,734,622

Total Projected Revenues 2024 **\$ 16,614,722**

EXPENSES:

Salaries & Benefits:

Salaries with capacity @	93.0%	\$	8,178,285
Allows for vacancy rate @	7.0%		
Fringe Benefits @	76.15%		6,227,764
Total Salaries & Benefits			\$ 14,406,050

Operating Expenses:

Office Expense		\$	558,700
Hearing Fees			124,000
Other Expenses			196,500
Maintenance & Fixed Expenses			335,000
Special Purpose Expenses			1,315,300
Emoluments	\$	715,300	
Contingencies		-	
Attorney Reg. Costs		600,000	
Payment to BBE		-	
Equipment Expenses			90,000
Total Operating Expenses			\$ 2,619,500

Total Projected Expenses 2024 **\$ 17,025,550**

Revenues Less Expenses 2024 **\$ (410,828)**

ADD: Projected Ending Reserve, 2023 **1,940,141**

Projected Reserve, End of 2024 **\$ 1,529,313**
9.0%