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SCMF-10-0000186

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
DISCIPLINARY BOARD OF THE HAWAI'I SUPREME COURT

ORDER APPROVING THE BUDGET OF THE DISCIPLINARY
BOARD OF THE HAWAI'I SUPREME COURT FOR CALENDAR YEAR 2018
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of the 2018 proposed budget submitted by the Disciplinary Board of the Hawai'i Supreme Court on October 10, 2017, and the Hawai'i State Bar Association's letter dated September 29, 2017, wherein the HSBA recommends the supreme court approve the 2018 proposed Disciplinary Board budget, it appears the Disciplinary Board seeks approval of a budget with projected revenues of \$1,528,825 and projected expenditures of \$1,771,938, and the Disciplinary Board has reserves sufficient to cover the deficit. Therefore,

IT IS HEREBY ORDERED, pursuant to Rule 2.4(e)(8) of the Rules of the Supreme Court of the State of Hawai'i, that the

Disciplinary Board's proposed budget for calendar year 2018, a copy of which is attached hereto, is approved.

DATED: Honolulu, Hawai'i, November 20, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



2018 Disciplinary Board Budget

	2017 Budget Approved by Supreme Court	2017 Estimated Actual	2018 Budget	Notes for 2018
1 Revenue				
2 Attorney Registration Fees	\$ 1,380,225	\$ 1,459,706	\$ 1,441,325	From 2017 HSBA stats
3 Interest on Bank Accounts	\$ 2,500	\$ 2,500	\$ 2,500	
4 Lawyers' Fund	\$ 85,000	\$ 85,000	\$ 85,000	
5				
6 TOTAL REVENUE	\$ 1,467,725	\$ 1,547,206	\$ 1,528,825	
7 Expenditures				
8 Salaries				
9 Chief Disciplinary Counsel				
Deputy Chief Disciplinary Counsel				
10				
11 Assistant Disciplinary Counsel				
12 Assistant Disciplinary Counsel				
13 Investigator				
14 Investigator				
15 Investigator				
16 Investigator				
17 Office Administrator				
18 Assistant Office Administrator				
19 Secretary				
20 Part-Time Clerk				
21 TOTAL SALARIES	\$ 818,171	\$ 772,018	\$ 860,327	2018 Salary amount includes a possible maximum 3% increase in salary per employee and new part-time clerk position. Eleven positions were budgeted for in 2017, and eleven positions are budgeted for in 2018. No new positions were added- See Notes II.A

2018 Disciplinary Board Budget

	2017 Budget Approved by Supreme Court	2017 Estimated Actual	2018 Budget	Notes for 2018
22				
23	\$ 60,000	\$ 50,000	\$ 60,000	Services for Board Counsel, Employment Attorney, Tax Attorney--See Notes II.B
24				
25	\$ 878,171	\$ 822,018	\$ 920,327	TOTAL SALARIES AND PROFESSIONAL CONTRACT SERVICES
26				
27				Benefits:
28	\$ 81,817	\$ 77,302	\$ 86,033	Retirement
29	\$ 58,800	\$ 56,800	\$ 70,800	Medical Plans
30	\$ 3,500	\$ 4,200	\$ 4,500	Group Life Insurance
31	\$ 62,108	\$ 60,000	\$ 65,482	FICA
32	\$ 4,700	\$ 2,800	\$ 3,500	Workers' Compensation
33	\$ 5,000	\$ 4,500	\$ 5,225	Unemployment Comp.
34	\$ 6,000	\$ 3,300	\$ 4,000	TDI
35	\$ 3,700	\$ 3,000	\$ 3,500	Long Term Disability Ins.
36	\$ 2,016	\$ 2,016	\$ 2,545	Bar Membership Fees
37	\$ 12,900	\$ 11,460	\$ 12,540	Parking
38	\$ 1,000	\$ 1,000	\$ 1,000	Employee Assistance Program
39	\$ 241,541	\$ 226,378	\$ 259,125	TOTAL BENEFITS

2018 Disciplinary Board Budget

	2017 Budget Approved by Supreme Court	2017 Estimated Actual	2018 Budget	Notes for 2018
40				
41				
42				
43	\$ 5,020	\$ 5,100	\$ 6,000	
44	\$ 5,000	\$ 3,500	\$ 5,000	
45	\$ 2,000	\$ 2,500	\$ 2,500	
46	\$ 3,000	\$ 1,000	\$ -	
47		\$ 4,500	\$ 5,000	
48	\$ 2,500	\$ 2,400	\$ 2,500	
49	\$ 3,500	\$ 3,000	\$ 3,500	
50	\$ 10,000	\$ 10,000	\$ 10,000	
51	\$ 8,000	\$ 8,400	\$ 9,000	
52	\$ 6,000	\$ 6,000	\$ 6,000	
53	\$ 13,000	\$ 10,000	\$ 12,000	
54	\$ 7,000	\$ 7,500	\$ 7,000	See Notes II.E.1
55	\$ 3,000	\$ 2,500	\$ 3,000	See Notes II.E.2
				In 2017, ADC and two new Investigators will be sent for training--See Notes II.E.3
56	\$ 3,200	\$ 5,600	\$ 3,400	See Notes II.E.4
57	\$ 6,860	\$ 10,290	\$ 6,860	See Notes II.E.5
58	\$ 2,000	\$ 2,000	\$ 1,650	
59	\$ 1,000	\$ 1,098	\$ 1,500	
60	\$ 4,600	\$ 7,000	\$ 5,000	
61	\$ 5,000	\$ 4,050	\$ 5,000	
62	\$ 162,600	\$ 162,424	\$ 169,167	
63	\$ 12,000	\$ 11,000	\$ 12,000	
64	\$ 500	\$ 500	\$ 500	
65				
66	\$ 1,000	\$ 1,000	\$ 1,000	
67	\$ 1,000	\$ 1,000	\$ 1,000	
68	\$ -	\$ 259	\$ -	
69	\$ 3,600	\$ 3,600	\$ 3,600	

2018 Disciplinary Board Budget

	2017 Budget Approved by Supreme Court	2017 Estimated Actual	2018 Budget	Notes for 2018
70	Professional Liability Ins. \$ 11,000	\$ 10,047	\$ 11,000	
71	Professional Organization Dues			
72	NOBC \$ 1,000	\$ 1,000	\$ 1,000	
73	ABA/CPR \$ 400	\$ 400	\$ 400	
74	NCLDB \$ 100	\$ 100	\$ 100	
75	OBI \$ 150	\$ 150	\$ 150	
76	Hawaii Employers Council \$ 1,760	\$ 1,500	\$ 1,760	
77	Computer Fees \$ 10,000	\$ 12,000	\$ 14,000	See Notes II.G
78	Upgrade Data Management System	\$ 60,000	\$ 6,000	In 2017, database needs to be updated and upgraded. Maintenance costs will continue in 2018--See Notes II.F.
79	Employee Training \$ 500	\$ 1,300	\$ 500	
80	Litigation Costs \$ 32,200	\$ 30,000	\$ 32,200	
81	Audit of Attorneys Records			
82	Trusteeship Costs \$ 25,000	\$ 40,000	\$ 45,000	See Notes II.H.1
83	Contract Trustee \$ 50,000	\$ 120,000	\$ 165,000	In 2017, 4 paid trustees; costs to continue in 2018--See Notes II.H.2
84	Judgment Filing Costs \$ 300	\$ 246	\$ 300	
85	Miscellaneous \$ 3,500	\$ 4,500	\$ 4,500	
86	DB Hearing Committee Seminar			Last training seminar was held in 2015
86	HSBA Credit Card Fee Charge		\$ 24,899	New expense
87	TOTAL CURRENT EXPENSES \$ 407,290	\$ 557,464	\$ 588,986	
88				
89	Capital Expenses:			
90	Equipment:			
91	Computer Hardware \$ 1,000	\$ 1,000	\$ 1,000	
92	Recorders, Tapes, etc.			

NOTES I. COMPUTATION OF DISCIPLINARY BOARD FUNDS IN 2018

A. PROJECTED 2018 REGISTRATION FEES BY CATEGORY (estimated).

Category	No. Of Attys	Registration Fee	Amount
Active Attorneys			
5+ Years	4,486*	\$ 250.00	\$ 1,121,500.00
1-4 Years	307*	\$ 150.00	\$ 46,050.00
New Admittees			
February 2018	75	\$ 150.00	\$ 11,250.00
July 2018	125	\$ 75.00	\$ 9,375.00
Inactive Attorneys	2,999*	\$ 50.00	\$ 149,950.00
Pro Hac Vice	172	\$ 600.00	\$ 103,200.00
			\$ 1,441,325.00

*Based on 2017 Bar Statistics and Summaries by HSBA.

B. CALCULATION OF 2018 TOTAL AVAILABLE REVENUE.

2018 ARS Receipts	\$1,441,325.00
Interest on Checking, Savings & M/M Certs.	2,500.00
**Lawyers' Fund for Client Protection	<u>85,000.00</u>
TOTAL	\$1,528,825.00+

C. CALCULATION OF CARRYOVER AT DECEMBER 31, 2017.

2017 Projected Revenue	\$1,547,206.00
2017 Projected Expenditures	1,607,860.00
2017 Excess of Revenue Over Expenditures	(60,654.00)
December 31, 2016 Carryover	<u>\$ 679,542.00</u>
	\$ 618,888.00

D. TOTAL REVENUE FOR 2018 **\$2,147,713.00**

+Amount utilized for 2018 budgeting purposes.

NOTES II.

A. ODC Salaries [Line 21]

The salaries are based upon the following staffing level at the Office of Disciplinary Counsel at the end of 2017:

- 1 - Chief Disciplinary Counsel
- 1 - Deputy Chief Disciplinary Counsel
- 2 - Assistant Disciplinary Counsel
- 1 - Supervising Investigator
- 3 - Investigators
- 1 - Office Administrator
- 1 - Assistant Office Administrator
- 1 - Legal Secretary/Receptionist

Funding includes a new part-time clerk position in 2018 to assist the office with scanning, filing, and indexing documents into our database. It does not appear that any additional positions need to be created in 2018.

Based on a 2015 survey conducted by the National Organization of Bar Counsel, ODC attorneys and investigators are generally paid less than the average salary for the same positions nationally, notwithstanding Hawai'i's high cost of living.

B. Professional Contract Services and Board Counsel [Line 23]

This category includes the purchase of outside legal services as needed from an employment attorney and tax attorney. The Board Counsel is also an outside attorney, who provides legal research and advice to the Board in its adjudicatory and administrative roles. All of the above offer discounted rates to the Board.

C. Benefits

1. Medical Plans [Line 29]

In 2017, the Board's contribution to an employee's medical plan was reduced to \$650.00 per month. At the end of 2017, it is anticipated that eight employees will need medical coverage, two employees with the additional benefit for a family plan.

- a. $\$650.00/\text{month} \times 8 \text{ employees} \times 12 \text{ months} = \$62,400.00$
- b. Additional benefit for two employees enrolled in a family plan $\$350.00/\text{month} \times 12 \text{ months} \times 2 \text{ employees} = \$8,400.00$

TOTAL Line 29 = \$70,800.00

2. Bar Membership Fees [Line 36]

HSBA	\$210.00
Processing	15.00
DB	250.00
<u>AAP</u>	<u>34.00</u>

Total Dues: 509.00 x 5 attorneys = \$2,545.00

TOTAL Line 36 = \$2,545.00

3. Parking/Bus Passes [Line 37]

In 2017, the Board's contribution to employees' parking was reduced from \$150.00 per month to \$100.00 per month. ODC will continue to offer bus passes at \$70.00 per month.

Parking:	CDC (full parking)	\$235.00
	DCDC	100.00
	[new ADC]	100.00
	Sup Inv	100.00
	Inv	100.00
	[new Investigator]	100.00
	OA	100.00
	Total	835.00

\$835.00/mo x 12 months = \$10,020.00

Bus Passes:	ADC	\$70.00
	AOA	70.00
	Secretary	70.00

\$210.00/mo x 12 months = \$2,520.00

TOTAL Line 27 = \$12,540.00

D. Employee Assistance Program (EAP) [Line 38]

This program assists the employee with personnel-related and other problems, providing individual employee counseling, family counseling, mediation, and consultation regarding employee issues. Since ODC does not have an in-house human resource program, it is necessary to have this cost-effective program available to ODC management when personnel or other human resource issues arise.

E. Travel

1. Inter-Island [Line 54]

The Board has reduced its request by \$3,800.00, from \$10,800.00 to \$7,000.00.

Estimated at \$200.00 per trip = 35 trips

TOTAL Line 54 = \$7,000.00

2. Subsistence (Inter-Island) [Line 55]

Includes parking charges, and any other related expenses.

TOTAL Line 55 = \$3,000.00

3. Out of State [Line 56]

NOBC Mid-Year Meeting in Vancouver, B.C.-one attorney
Round-trip airfare \$700.00

NOBC Annual Meeting in Chicago, IL-one attorney
Round-trip airfare \$1,000.00

Organization of Bar Investigators [TBA]-one investigator
Round-trip airfare \$1,000.00

NCPO Forum/Center for Professional Responsibility meeting
[TBA]-Fund Administrator
Round-trip airfare \$800.00*

National Council of Lawyer Disciplinary Boards
Vancouver, B.C.-one Board member
Round-trip airfare \$700.00

TOTAL Line 56 = \$3,400.00

* The Lawyer's Fund for Client Protection pays for the NCPO trip.

4. Subsistence (Out of State) [Line 57]

Hotel: \$250.00/night x 5 nights = \$1,250.00/trip

Meals: \$73.00/day x 5 days = \$365.00/trip

Ground Transportation: \$100.00/trip

Subtotal: \$1,715.00/trip x 4 trips = \$6,860.00

TOTAL Line 57 = \$5,145.00

5. Conference Registration Fees [Line 58]

In 2018, the registration fees are expected to be as follows:

NOBC: \$575.00 x 2 (Attorneys) = \$1,150.00

NCLDB: \$500.00 x 1 (Board Member) = \$500.00

TOTAL Line 58 = \$1,650.00

F. Upgrade Data Management System [Line 78]

The current case management system, Attorney Complaint Tracking System ("ACTS"), was installed in 2010. The system was never completely implemented after installation due primarily to a lack of vendor support. Since then, the original vendor has ceased service on the system. ODC is experiencing problems backing up the data in ACTS to a cloud-based back up system. Other states like Maine have the same case management system and have experienced similar problems with ACTS. Maine is also considering a new case management system to keep up with their caseload. ODC has initiated a search for a replacement system. A portion of the acquisition and annual maintenance costs for the new case management system will be borne by the Lawyer's Fund for Client Protection whose cases will be administered in the new system.

G. Computer Fees [Line 77]

This category includes the cost of computer research (e.g. LexisNexis, Pacer), and internet services.

H. Trusteeships (see *Detail of Trusteeship Costs attached*)

The tide of deceased attorneys has increased as anticipated over the past three years. There have already been 12 attorney deaths in 2017. For the full year 2016, there were 27 attorney deaths. Both 2016 and 2017 are up significantly from 2015, when there were 13 attorney deaths. As the trend is increasing over time, ODC will be getting more and more calls for assistance and an increase in the need

to open trusteeships in these cases. This will result in an increased pressure on ODC resources and detract from the performance of its essential mission.

A 2017 demographic study found that over 50% of the active HSBA membership is composed of attorneys over the age of 50. The results of an HSBA survey included in the 2015 Hawaii License Registration form indicated that an overwhelming number of solo and small firm attorneys (with less than five lawyers in the firm) do not have an active attorney designated in writing to oversee his/her practice in the event of the attorney's death or disability.

To the extent that individual ODC attorneys manage an average of 64 cases (which exceeds the national average in other state bar disciplinary agencies), serve on committees, provide educational presentations to the bar, and offer ethics guidance to bar members, the increasing time and resources they will have to devote to trusteeships distracts them from their primary mission of enforcing ethics violations. Given the real potential for increased need for trusteeships in 2017-2018 (based on the demographic study and HSBA survey), ODC will likely face increased pressure to retain outside trustees to allow ODC attorneys to timely investigate and prosecute cases.

ODC has budgeted for a significant increase in costs associated with trusteeships in 2018.

1. Costs [Line 82]

Costs for postage, shipping, storage, and review of files at the storage facility, together with the publication of notices, is estimated at approximately \$45,000.00.

There are currently five active trusteeships in which ODC pays the cost of storage.

2. Contract Trustee [Line 83]

The Board expects to pay \$150,000 for the services of contract Trustees in 2018. There are currently four (4) active paid trusteeships: Robert Garbett, Laurence Scott, Lionel Riley, and Meyer Ueoka. In one of the pending trusteeships alone, the trustee has to store, administer, and inventory over 500 boxes of client files as well as claims for IOLTA funds owed to clients.

ODC recently began directing the contract trustees to assert proof of claims in cases where probate has been opened on behalf of the deceased attorney's estate. This has been done in two separate estates where a probate action was filed (Garbett and Scott). In trusteeships where probate has been opened, this will enhance the

prospects of recovering trustee fees and costs incurred by ODC as well as potential Lawyer's Fund for Client Protection claims against deceased attorneys to protect affected clients.

