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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 2020
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of the 2020 proposed budget submitted by the Disciplinary Board of the Hawai‘i Supreme Court on October 31, 2019, and the Hawai‘i State Bar Association’s letter dated September 30, 2019, wherein the HSBA concurs with the 2020 proposed Disciplinary Board budget, it appears the Disciplinary Board seeks approval of a budget with projected revenues of \$1,576,775 and projected expenditures of \$2,034,905, 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 2020, a copy of which is attached hereto, is approved.

DATED: Honolulu, Hawai'i, November 26, 2019.

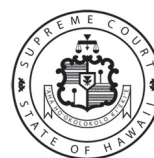
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



2020 DISCIPLINARY BOARD BUDGET

	2019 Budget Approved by Supreme Court	2019 Estimated Actual	2020 Budget	Notes for 2020
1				
2	\$ 1,461,525	\$ 1,440,663	\$ 1,471,775	From 2019 HSBA stats
3	\$ 2,500	\$ 18,000	\$ 10,000	
4	\$ 90,000	\$ 90,000	\$ 95,000	See Notes II.A
5				
6	\$ 1,554,025	\$ 1,548,663	\$ 1,576,775	
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20				
21	\$ 902,549	\$ 884,373	\$ 924,820	2020 Salary amount includes a possible maximum 5% increase in salary for some employees. 12 FT positions are budgeted for in 2020. See Notes II.B

2020 DISCIPLINARY BOARD BUDGET

		2019 Budget Approved by Supreme Court	2019 Estimated Actual	2020 Budget	Notes for 2020
22					
23	Disciplinary Board Professional Contract Service (includes Board Counsel)	\$ 40,000	\$ 20,000	\$ 30,000	Services for Board Counsel, Employment Attorney, Tax Attorney--See Notes II.C(a)
24	ODC Professional Contract Services.		\$ 10,000	\$ 10,000	Services for ODC Special Counsel--See Notes II.C(b)
25	TOTAL SALARIES AND PROFES- SIONAL CONTRACT SERVICES	\$ 942,549	\$ 914,373	\$ 964,820	
26					
27	Benefits:				
28	Retirement	\$ 83,523	\$ 58,397	\$ 92,482	See Notes II.D1
29	Medical Plans	\$ 93,600	\$ 79,200	\$ 96,000	DB contributes \$550 a month towards employee medical premium. For family plan, DB will contribute an extra \$350 per month--For 2020 Budget est is for all employees taking medical, four needing a family plan. See Notes II.D.2
30	Group Life Insurance	\$ 4,000	\$ 5,000	\$ 6,000	
31	FICA	\$ 69,317	\$ 52,000	\$ 70,000	
32	Workers' Compensation	\$ 3,500	\$ 3,500	\$ 3,500	
33	Unemployment Comp.	\$ 5,000	\$ 4,500	\$ 5,000	
34	TDI	\$ 4,500	\$ 4,874	\$ 5,000	
35	Long Term Disability Ins.	\$ 3,500	\$ 4,560	\$ 5,000	
36	Bar Membership Fees	\$ 1,556	\$ 1,716	\$ 1,866	For four attorneys-- See Notes II.D.3

2020 DISCIPLINARY BOARD BUDGET

		2019 Budget Approved by Supreme Court	2019 Estimated Actual	2020 Budget	Notes for 2020
37	Parking	\$ 16,560	\$ 10,920	\$ 11,520	DB pays full parking cost for CDC and contributes \$100 a month towards employee parking. DB will also subsidize bus passes--2020 estimate CDC parking; 5 employee parking; and 3 bus passes. See Notes II.D.4
38	Employee Assistance Program	\$ 1,200	\$ 1,000	\$ 1,200	
39	TOTAL, BENEFITS	\$ 286,256	\$ 225,667	\$ 297,568	
40					
41	Current Expenses:				
42	Services on a Fee Basis				
43	Accountant Fees	\$ 6,000	\$ 5,016	\$ 5,016	
44	IT Services	\$ 5,000	\$ 15,000	\$ 12,000	
45	Computer Programmer	\$ 2,500	\$ -	\$ -	
46	Pension Services Corp.	\$ 3,000	\$ 3,500	\$ 4,000	
47	Akamai Messenger Service	\$ 3,000	\$ 3,500	\$ 4,000	
48	Ceridian	\$ 4,000	\$ 3,162	\$ 4,000	
49	DB Annual Audit	\$ 10,100	\$ 10,100	\$ 10,100	
50	Stationery & Supplies	\$ 13,000	\$ 12,000	\$ 12,000	
51	Postage/Postal Charges	\$ 5,000	\$ 3,000	\$ 3,000	
52	Telephone	\$ 13,500	\$ 12,500	\$ 12,500	

2020 DISCIPLINARY BOARD BUDGET

	2019 Budget Approved by Supreme Court	2019 Estimated Actual	2020 Budget	Notes for 2020
53	\$ 13,600	\$ 9,000	\$ 13,600	4 Board Members and Board Counsel for monthly Board Meetings at \$200 per trip, extra 8 trips for Chair to attend meetings with Court or HSBA and for Hearing Officer or ODC investigator travel. See Notes II.E.1
54	\$ 3,500	\$ 1,500	\$ 2,500	Parking charges and related expenses. See Notes II.E.2
55	\$ 5,400	\$ 5,400	\$ 4,400	2020--1 Attorney to NOBC Mid-year; 1 Attorney NOBC Annual; 1 Investigator to OBI Conference; 1 Fund Administrator to NCPO*; 1 DB Member to NCLDB. See Notes II.F.1
56	\$ 10,290	\$ 10,290	\$ 8,575	2020 - Estimate 1,715 per trip x 5 trips. See Notes II.F.2
57	\$ 2,400	\$ 3,000	\$ 2,400	See Notes II.F.3
58	\$ 2,000	\$ 1,800	\$ 1,800	
59	\$ 5,000	\$ 5,000	\$ 5,000	
60	\$ 3,500	\$ 5,500	\$ 4,500	See Notes II.G
61	\$ 171,348	\$ 164,003	\$ 173,976	See Notes II.H
62	\$ 15,000	\$ 13,000	\$ 15,000	See Notes II.I.1
63	\$ 500	\$ 3,000	\$ 1,000	See Notes II.I.2
64				

2020 DISCIPLINARY BOARD BUDGET

		2019 Budget Approved by Supreme Court	2019 Estimated Actual	2020 Budget	Notes for 2020
65	Commercial Package	\$ 1,000	\$ 1,000	\$ 1,000	
66	Umbrella	\$ 1,000	\$ 1,000	\$ 1,000	
67	Erisa Bond	-	\$ 264	-	
68	Director's & Officers Liability	\$ 3,600	\$ 4,182	\$ 4,200	
69	Professional Liability Ins.	\$ 10,200			See Notes II.J
70	Professional Organization Dues				See Notes II.K
71	NOBC	\$ 1,000	\$ 1,000	\$ 1,000	
72	ABA/CPR	\$ 400	\$ 150	\$ 400	
73	NCLDB	\$ 100	\$ 100	\$ 100	
74	OBI	\$ 150	\$ 150	\$ 150	
75	Hawaii Employers Council	\$ 2,500	\$ 2,000	\$ 2,500	
76	Computer Fees	\$ 15,000	\$ 30,000	\$ 20,000	See Notes II.L
77	Upgrade Data Management System	\$ 3,900	\$ 6,000	\$ 6,000	See Notes II.M
78	Employee Training	\$ 2,500	\$ 2,100	\$ 2,500	
79	Litigation Costs	\$ 40,000	\$ 50,000	\$ 60,000	
80	Trusteeship Costs	\$ 45,000	\$ 50,000	\$ 60,000	See Notes II.N.1
80	Trusteeship Costs-Recovered		\$ (30,593)		
81	Contract Trustee	\$ 100,000	\$ 75,000	\$ 100,000	See Notes II.N.2
81	Contract Trustee Costs-Recovered		\$ (74,984)		
82	Judgment Filing Costs	\$ 300	\$ 205	\$ 300	
83	Miscellaneous	\$ 4,500	\$ 5,000	\$ 6,000	See Notes II.O
84	DB Hearing Committee Seminar				
85	HSBA Credit Card Fee Charge	\$ 25,000	\$ 25,000	\$ 25,000	
86	Storage Reduction Project			\$ 100,000	See Chief's Memo
87	Trust Account Audit Initiative			\$ 80,000	See Chief's Memo
88	TOTAL CURRENT EXPENSES	\$ 553,788	\$ 436,845	\$ 769,517	
89					

NOTES I - COMPUTATION OF DISCIPLINARY BOARD FUNDS IN 2019

A. PROJECTED 2020 REGISTRATION FEES BY CATEGORY (estimated).

(Based on 2019 Stats)

Category	No of Attorneys*	Registration Fee	Amount
Active Attorneys			
5+ Years	4569	\$ 250.00	\$ 1,142,250.00
1-4 Years	290	\$ 150.00	\$ 43,500.00
New Admittees			
February 2020	75	\$ 150.00	\$ 11,250.00
July 2020	125	\$ 75.00	\$ 9,375.00
Inactive Attorneys	3100	\$ 50.00	\$ 155,000.00
Pro Hac Vice	184	\$ 600.00	\$ 110,400.00
			<u>\$ 1,471,775.00</u>

*Based on 2019 Bar Statistics and Summaries by HSBA as of 05/24/2019.

B. CALCULATION OF 2020 TOTAL AVAILABLE REVENUE.

2020 ARS Receipts	\$ 1,471,775.00
Interest on Bank Accounts	\$ 10,000.00
Lawyers' Fund Admin Fee	\$ 95,000.00
	<u>\$ 1,576,775.00</u>

C. CALCULATION OF CARRYOVER AT DECEMBER 31, 2019

2019 Projected Revenue	\$ 1,548,663.00
2019 Projected Expenditures	\$ 1,568,622.00
2019 Excess of Revenue Over Expenditures	\$ (19,959.00)
December 31, 2018 Carryover	\$ 924,107.00
	<u>\$ 904,148.00</u>

D. TOTAL REVENUE FOR 2020 \$ 2,480,923.00

9/20/2019

NOTES II.

A. Lawyers' Fund for Client Protection [Line 4]

ODC currently provides administrative and professional support to the Lawyers' Fund in the form of one administrative staff member, one Disciplinary Investigator for processing Lawyers' Fund claims, the Deputy Chief Disciplinary Counsel, and the Chief Disciplinary Counsel who serves as the Fund Administrator. The Lawyers' Fund is also housed in the ODC offices, which includes meeting space and equipment. A recent cost analysis performed by ODC reflects that the annual costs to ODC for these services are approximately \$145,000.00 per year. In response to these costs, the Lawyers' Fund is increasing its contribution to ODC over three annual installments to \$5,000.00 to a total of \$100,000 per year beginning in 2021. For 2020, the Lawyers' Fund will provide \$95,000.00 in funding to the Disciplinary Board.

B. ODC Salaries [Line 21]

The salaries are based upon the following:

- 1 - Chief Disciplinary Counsel
- 1 - Disciplinary Board Administrative Director
- 1 - Manager Office Administration
- 1 - Deputy Chief Disciplinary Counsel
- 2 - Assistant Disciplinary Counsel
- 4 - Investigators
- 1 - Administrative Specialist
- 1 - Legal Secretary/Receptionist

The proposed 2020 salary expense for ODC attorneys, Disciplinary Investigators, and administrative staff reflects the return to full staffing and a 5% overall increase. The increase will be used to both provide merit increases, and make employment at ODC more attractive by offering newly hired attorneys and investigators salaries that are closer to current market rates.

Based on the 2017 National Organization of Bar Counsel Salary Survey, ODC attorneys and Disciplinary Investigators are generally paid less than the average salary for the same positions in comparable jurisdictions, notwithstanding the higher cost of living in Hawaii.

In a recent Star Advertiser article, the "low-income" threshold in Honolulu is now \$67,500.00.

C. Professional Contract Services and Board Counsel

a. For the Disciplinary Board [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.

b. For the Office of Disciplinary Counsel [Line 24]

ODC to contract with outside lawyers on an hourly basis for on an overload basis (such as Supreme Court briefing), or for outer-island support where anticipated travel expense of Honolulu staff exceeds the utility of the needed services.

D. Benefits

1. Retirement Plan-Employer's Contribution [Line 28]

10% of gross salary total with 12 employees = \$92,482.00

2. Medical Plans [Line 29]

a. \$550.00/month x 12 employees x 12 months =
\$79,200.00

(Current premium for UHA plan is \$509.00 per month.)

b. Additional benefit for employees enrolled in a family plan \$350.00/month x 4 employees x 12 months = \$16,800.00

Total a + b = **\$96,000.00** (12 employees, 4 with family plans)

Remaining benefit amounts are based on either a percentage of salary total, or actual costs.

3. Bar Membership Fees [Line 36]

This category includes HSBA annual dues and ABA dues for Chief Disciplinary Counsel.

a. HSBA Dues

	Admitted 5+ Years	Admitted 1-4 Years
HSBA	\$210.00	\$150.00
Processing Fee	15.00	15.00
DB	250.00	150.00
<u>AAP</u>	<u>34.00</u>	<u>34.00</u>
	509.00 x 2 attys	349.00 x 2 attys

Total HSBA Dues: \$1,716.00

b. ABA Dues - \$150.00 for a government attorney

Total a + b = Total Line 27 = **\$1,866.00**

4. Parking/Bus Passes [Line 37]

ODC employees may choose between a fully subsidized bus pass or a \$100.00 partial subsidy toward parking, which is currently \$250.00 per month in the building's garage. The CDC receives a fully subsidized unreserved parking stall in the garage.

Parking: CDC (full parking)	\$250.00
DBAD	100.00
Inv	100.00
Inv	100.00
Inv	100.00
Admin Specialist	<u>100.00</u>
Total	<u>750.00</u>

\$750.00/mo x 12 months = \$9,000.00

Bus Passes: DCDC	\$70.00
MDB	70.00
Secretary	<u>70.00</u>
Total	210.00

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

TOTAL Line 38 = **\$11,520.00**

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

This program assists our employees, and their family members, with personnel-related and other problems, by providing individual employee counseling, family counseling, and/or mediation.

E. Transportation and Subsistence-Inter-Island

1. Inter-Island [Line 53]

Four Board Members and Board Counsel for monthly Board meetings at \$200.00 per trip

$$5 \times \$200 \text{ per trip} \times 12 = \$12,000$$

Additional travel for Chairperson to attend meetings with the Supreme Court or HSBA, or Hearing Officers to participate in hearings or settlement conferences

$$8 \times \$200 \text{ per trip} = \$1,600$$

$$\text{Total Line 54} = \$13,600.00$$

2. Subsistence (Inter-Island) [Line 54]

Includes parking charges, and any other related expenses.

$$\text{Total Line 55} = \$2,500.00$$

F. Travel and Subsistence-Out of State [Line 55 and 56]

ODC attorneys have no opportunities in Hawaii for in-person training specific to their area of law and duties. The National Organization of Bar Counsel ("NOBC") provides specialized training on attorney discipline, and its semiannual and annual meetings focus on case law and procedure unique to the disciplinary system. In addition, ODC attorneys benefit from learning about national trends in this singular area of the law, as well as having networking opportunities which can provide leads to effective and lower-cost resources for ODC's attorneys and investigators.

The Organization of Bar Investigators ("OBI") provides specialized training for disciplinary investigators whose primary duties involve investigating and participating in the regulation of the legal profession. The annual OBI meeting provides a range of information from locating witnesses, software needed to track IOLTA cases, to interviewing techniques.

For these reasons, ODC plans to continue sending staff attorneys to NOBC meetings, and an investigator to OBI, though at a reduced level. Those attorneys and investigator are expected to provide their ODC colleagues with in-service training upon their return.

As part of its \$95,000.00 administration contract for 2020, the Lawyers' Fund pays for one (1) trip to attend the annual meeting of the National Client Protection Organization (NCPO). For budgeting purposes, the NCPO trip is shown as an expense item.

The Disciplinary Board pays for one member to attend the National Council of Lawyer Disciplinary Boards meeting. NCLDB serves as an information clearinghouse for disciplinary boards nationwide.

1. Travel-Out of State [Line 55]

NOBC Mid-Year Meeting [Austin, TX]-one attorney
Round-trip airfare \$700.00

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

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

National Council of Lawyer Disciplinary Boards [TBA]
Round-trip airfare \$700.00

NCPO Annual Meeting [New Orleans, LA]
Round-trip airfare \$1,000.00*

Total = \$4,400.00

*The Lawyers' Fund for Client Protection - NCPO conference is paid for from the annual Lawyers' Fund administration fee.

2. Subsistence-Out of State [Line 56]

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 5 trips = \$8575.00

Total = **\$8,575.00**

3. Conference Registration Fees [Line 57]

In 2020, the registration fees are expected to be as follows:

NOBC: \$525.00 x 2 (Attorneys) = \$1,150.00

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

OBI: \$400.00 x 1 (Investigator) = \$400.00

NCPO: \$350.00 x 1 (Fund Administrator) = \$350.00**

Total Line 58 = **\$2,400.00**

**The Lawyers' Fund for Client Protection - NCPO conference is paid for from the annual Lawyers' Fund administration fee.

G. Publication/Subscriptions [Line 60]

This category includes annual subscriptions to the Star-Advertiser, Pacific Business News, The National Law Journal, and ABA publications.

H. Office Rent-City Financial Tower [Line 61]

The full annual rate for 2020, with Operating Expenses, will be in the range of approximately \$7,387.42 x 11 months = \$7,635.32 for December 2020 = \$85,079.28 CAM = **\$173,976.22**.

I. Repair and Maintenance

1. Leasing of Equipment [Line 62]

ODC will continue to lease selected office equipment, including the copies (which also serve as high volume scanners), and a postage meter, as this is a cost-effective method of financing and periodically upgrading them.

2. Office [Line 63]

This category includes cost of general repair within the office, not covered by building management, such as plumbing.

J. Insurance

ODC will no longer carry Professional Liability Insurance

K. Membership in Professional Organizations

NOBC is the National Organization of Bar Counsel, which is the only organization that provides educational seminars and consulting on topics/issues specific to attorney discipline.

NCLDB is the National Council of Lawyer Disciplinary Boards, which is the Board's counterpart to the NOBC.

OBI is the Organization of Bar Investigators, which provides information sharing and educational opportunities for ODC's Disciplinary Investigators.

ABA/CPR is the American Bar Association Center for Professional Responsibility, which provides resource materials (including articles, opinions, and case law) on ethics and discipline.

Hawaii Employers' Council (HEC) provides support and guidance to employers on personnel issues. The membership includes a hotline for questions about discipline, discrimination, bullying, and leaves of absence. HEC is also a great resource for staff training, from how to be a manager, to first aid and CPR.

L. Computer Fees [Line 76]

This category includes the cost of subscriptions to Time Matters-Lexis, LexisNexis Research, Hawaii Information Service, Pacer, Dropbox, Microsoft Office 365, Adobe Acrobat Pro, Quickbooks, and internet service. The actual cost in 2019 is higher than budgeted due to an upgrade to the DB/ODC website by Gum Design, LLC. Upgrades to the website will continue in 2020.

M. Maintenance for Upgrade to Data Management System [Line 77]

Time Matters, the new data management system was installed in 2018. \$6,000 is budgeted for annual maintenance.

N. Trusteeship Costs

Under Supreme Court Rule 2.20, trustees are appointed by the Court where an attorney dies, is disabled, is suspended or disbarred, or abandons his or her law practice, and no other responsible party can be found to wind down the practice. ODC is charged with initiating these proceedings and holding remaining client files once the trustee is discharged. Often, ODC's attorneys are appointed as trustees.

There are 30 open trusteeships. There are two more being opened in the next few weeks. While some are being handled by outside trustees, all are under ODC's oversight. It is anticipated that Trusteeship costs will continue to rise in 2020 as more attorneys cease practicing voluntarily, due to discipline, or by reason of disability or death.

ODC attorneys manage an active caseload (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 continuing need for trusteeships in 2020, ODC will likely face increased pressure to retain outside trustees to allow ODC attorneys to timely investigate and prosecute cases.

1. Trusteeship Costs [Line 80]

Costs for postage, shipping, storage, postage, together with the publication of notices, is estimated at approximately \$60,000.00.

There are currently 8 trusteeships in which ODC pays the cost of storage. Out of the 8, the Garbett trusteeship and the Ueoka trusteeship rent out two storage units each.

In 2019, the estates of deceased attorneys Laurence Scott, Thomas Dunn, and Robert Garbett reimbursed the Board for some of the costs spent on trustees' fees and costs for storage and distribution of client files. These unexpected payments lowered the amount in this category. In 2020, the Board cannot predict if any other reimbursements from any of the other trusteeships will be made.

2. Contract Trustee [Line 81]

The Board expects to pay \$100,000.00 for the services of contract Trustees in 2020. There are currently 9 active paid trusteeships: William Gilardy, Stuart Ing, Iris Okawa, Lionel Riley, Meyer Ueoka, Lisa Volquardsen, Sandra Song, Stephanie St. John, and Richard Miyao. 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.

The Court is directing the contract trustees to assert proof of claims in cases where probate has been opened on behalf of the deceased attorney's estate. In trusteeships where probate has been opened, this will enhance the prospects of recovering trustee fees and costs incurred by the Board as well as potential Lawyer's Fund for Client Protection claims against deceased attorneys to protect affected clients.

In 2019, as noted under Trusteeship Costs [Line 80], the estates of deceased attorneys Laurence Scott, Thomas Dunn, and Robert Garbett reimbursed the Board for expenses. In 2020, the Board cannot predict if any other reimbursements from any of the other trusteeships will be made.

O. Miscellaneous

This category includes DB meeting expenses, and other unexpected, minor expenses.

P. Computer Hardware [Line 92]

In 2020, \$1,000.00 is budgeted for scanners or any other computer items that will need to be replaced.

09/20/2019