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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 2021
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

Upon consideration of the 2021 proposed budget submitted by the Disciplinary Board of the Hawai‘i Supreme Court on October 20, 2020, and the Hawai‘i State Bar Association’s letter dated September 28, 2020, wherein the HSBA concurs with the 2021 proposed Disciplinary Board budget, it appears the Disciplinary Board seeks approval of a budget with projected revenues of \$1,558,600 and projected expenditures of \$1,985,008, 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 2021, a copy of which is attached hereto, is approved. This approval is subject to compliance with the representations made by the Disciplinary Board at the meeting that took place on December 21, 2020.

DATED: Honolulu, Hawai'i, December 29, 2020.

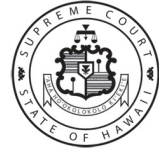
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins



2021 DISCIPLINARY BOARD BUDGET

		2020 Budget Approved by Supreme Court	2020 Estimated Actual	2021 Budget	Notes for 2021
1	Revenue				
2	Attorney Registration Fees	\$ 1,471,775	\$ 1,462,554	\$ 1,448,600	See Notes I and II.A
3	Interest on Bank Accounts	\$ 10,000	\$ 10,000	\$ 10,000	
4	Lawyers' Fund	\$ 95,000	\$ 95,000	\$ 100,000	See Notes II.B
5					
6	TOTAL REVENUE	\$ 1,576,775	\$ 1,567,554	\$ 1,558,600	
7	Expenditures				
8	Salaries				
9	Chief Disciplinary Counsel				
10	Deputy Chief Disciplinary Counsel				
11	Assistant Disciplinary Counsel				
12	Assistant Disciplinary Counsel				
13	Investigator				
14	Investigator				
15	Investigator				
16	Investigator				
17	Manager Office Administration				
18	Administrative Specialist				
19	Secretary				
20	Disciplinary Board Administrative Dir				
21	TOTAL SALARIES	\$ 924,820	\$ 890,000	\$ 937,000	See Notes II.C
22					
	Disciplinary Board Professional Contract Service				
23	(includes Board Counsel)	\$ 30,000	\$ 10,000	\$ 20,000	See Notes II.D.1
24	ODC Professional Contract Services	\$ 10,000	\$ 60,000	\$ 30,000	See Notes II.D.2
25	LF Staff Attorney			\$ 60,000	See Notes II.D.3
26	TOTAL SALARIES AND PROFES- SIONAL CONTRACT SERVICES	\$ 964,820	\$ 960,000	\$ 987,000	

2021 DISCIPLINARY BOARD BUDGET

		2020 Budget Approved by Supreme Court	2020 Estimated Actual	2021 Budget	Notes for 2021
27					
28	Benefits:				
29	Retirement	\$ 92,482	\$ 63,150	\$ 93,700	See Notes II.E.1
30	Medical Plans	\$ 96,000	\$ 96,300	\$ 108,600	See Notes II.E.2
31	Group Life Insurance	\$ 6,000	\$ 6,000	\$ 6,000	
32	FICA	\$ 70,000	\$ 56,242	\$ 70,000	
33	Workers' Compensation	\$ 3,500	\$ 3,500	\$ 3,500	
34	Unemployment Comp.	\$ 5,000	\$ 6,000	\$ 9,000	
35	TDI	\$ 5,000	\$ 4,223	\$ 6,000	
36	Long Term Disability Ins.	\$ 5,000	\$ 4,560	\$ 5,000	
37	Bar Membership Fees	\$ 1,866	\$ 1,716	\$ 2,036	See Notes II.E.3
38	Parking	\$ 11,520	\$ 10,500	\$ 7,440	See Notes II.E.4
39	Employee Assistance Program	\$ 1,200	\$ 1,000	\$ 1,200	See Notes II.E.5
40	TOTAL BENEFITS	\$ 297,568	\$ 253,191	\$ 312,476	
41					
42	Current Expenses:				
43	Services on a Fee Basis				
44	Accountant Fees	\$ 5,016	\$ 5,016	\$ 5,016	
45	IT Services	\$ 12,000	\$ 15,000	\$ 15,000	
46	Computer Programmer	\$ -	\$ -	\$ -	
47	Pension Services Corp.	\$ 4,000	\$ 3,500	\$ 4,000	
48	Akamai Messenger Service	\$ 4,000	\$ 3,500	\$ 4,000	
49	Ceridian	\$ 4,000	\$ 3,162	\$ 4,000	
50	DB Annual Audit	\$ 10,100	\$ 10,100	\$ 10,100	
51	Stationery & Supplies	\$ 12,000	\$ 7,500	\$ 10,000	See Notes II.F
52	Postage/Postal Charges	\$ 3,000	\$ 3,000	\$ 3,000	
53	Telephone	\$ 12,500	\$ 12,500	\$ 12,500	
54	Trans (Inter-Island)	\$ 13,600	\$ 1,200	\$ 1,000	See Notes II.G
55	Subsistence (Inter-Island)	\$ 2,500	\$ 1,000	\$ 250	See Notes II.G

2021 DISCIPLINARY BOARD BUDGET

		2020 Budget Approved by Supreme Court	2020 Estimated Actual	2021 Budget	Notes for 2021
56	Trans (Out of State)	\$ 4,400	\$ 1,400	\$ -	See Notes II.H
57	Subsistence (Out of State)	\$ 8,575	\$ -	\$ -	See Notes II.H
58	Conference Registration Fees	\$ 2,400	\$ 2,000	\$ 1,000	See Notes II.H.1
59	Car Rental	\$ 1,800	\$ 180	\$ 500	
60	Ads/Legal Notices	\$ 5,000	\$ 1,000	\$ 1,000	
61	Publications/Subscriptions	\$ 4,500	\$ 5,500	\$ 500	See Notes II.I
62	Office Rent (CFT)	\$ 173,976	\$ 177,149	\$ 183,166	See Notes II.J
63	R & M (Leasing of Equipment)	\$ 15,000	\$ 14,500	\$ 15,000	See Notes II.K.1
64	R & M (Office)	\$ 1,000	\$ 500	\$ 1,000	See Notes II.K.2
65	Insurance				
66	Commercial Package	\$ 1,000	\$ 1,000	\$ 1,000	
67	Umbrella	\$ 1,000	\$ 1,000	\$ 1,000	
68	Erisa Bond	\$ -	\$ -	\$ -	
69	Director's & Officers Liability	\$ 4,200	\$ 4,182	\$ 4,200	
70	Professional Organization Dues				See Notes II.L
71	NOBC	\$ 1,000	\$ 1,000	\$ 1,000	
72	ABA	\$ 400	\$ 150	\$ 150	
73	CPR		\$ 100	\$ 100	
74	NCLDB	\$ 100	\$ 100	\$ 100	
75	OBI	\$ 150	\$ 150	\$ 150	
76	Hawaii Employers Council	\$ 2,500	\$ 1,500	\$ 2,500	
77	Computer Fees	\$ 20,000	\$ 35,000	\$ 35,000	See Notes II.M
78	Data Management System Maintenance	\$ 6,000	\$ 5,000	\$ 5,000	See Notes II.N
79	Employee Training	\$ 2,500	\$ 2,000	\$ 2,500	
80	Litigation Costs	\$ 60,000	\$ 50,000	\$ 60,000	See Notes II.O
81	Trusteeship Costs	\$ 60,000	\$ 60,000	\$ 60,000	See Notes II.P.1
82	Trusteeship Costs-Recovered				
83	Contract Trustee	\$ 100,000	\$ 100,000	\$ 100,000	See Notes II.P.2
84	Contract Trustee Costs-Recovered				

NOTES I - COMPUTATION OF DISCIPLINARY BOARD FUNDS IN 2021

A. PROJECTED 2021 REGISTRATION FEES BY CATEGORY (estimated).

Category	No of Attorneys*	Registration Fee	Amount
Active Attorneys			
5+ Years	4590	\$ 250.00	\$ 1,147,500.00
1-4 Years	290	\$ 150.00	\$ 43,500.00
Inactive Attorneys	2536	\$ 50.00	\$ 126,800.00
Pro Hac Vice	218	\$ 600.00	\$ 130,800.00
			<u>\$ 1,448,600.00</u>

*Based on 2020 Attorney Registration Receipts from HSBA as of June 30, 2020

B. CALCULATION OF 2021 TOTAL AVAILABLE REVENUE.

2021 ARS Receipts	\$ 1,448,600.00
Interest on Bank Accounts	\$ 10,000.00
Lawyers' Fund Admin Fee	\$ 100,000.00
	<u>\$ 1,558,600.00</u>

C. CALCULATION OF CARRYOVER AT DECEMBER 31, 2020

2020 Projected Revenue	\$ 1,567,554.00
2020 Projected Expenditures	\$ 1,858,384.00
2020 Excess of Expenditure Over Revenue Over	\$ (290,830.00)
December 31, 2019 Carryover	\$ 936,833.00
	<u>\$ 646,003.00</u>

D. TOTAL REVENUE FOR 2021 \$ 2,094,603.00

8/10/2020

NOTES I - COMPUTATION OF DISCIPLINARY BOARD FUNDS IN 2021

A. [CORRECTED] PROJECTED 2021 REGISTRATION FEES BY CATEGORY (estimated

Category	No of Attorneys*	Registration Fee	Amount
Active Attorneys			
5+ Years	4590	\$ 250.00	\$ 1,147,500.00
1-4 Years	290	\$ 150.00	\$ 43,500.00
Inactive Attorneys	2536	\$ 50.00	\$ 126,800.00
Pro Hac Vice	218	\$ 600.00	\$ 130,800.00
			\$ 1,448,600.00

*Based on 2020 Attorney Registration Receipts from HSBA as of June 30, 2020

B. CALCULATION OF 2021 TOTAL AVAILABLE REVENUE.

2021 ARS Receipts	\$ 1,448,600.00
Interest on Bank Accounts	\$ 10,000.00
Lawyers' Fund Admin Fee	\$ 100,000.00
	\$ 1,558,600.00

C. CALCULATION OF CARRYOVER AT DECEMBER 31, 2020

2020 Projected Revenue	\$ 1,567,554.00
2020 Projected Expenditures	\$ 1,858,384.00
2020 Excess of Expenditure Over Revenue Over :	\$ (290,830.00)
December 31, 2019 Carryover	\$ 936,833.00
	\$ 646,003.00

D. TOTAL REVENUE FOR 2021 \$ 2,204,603.00

as of 9/16/2020

NOTES II.

A. Attorney Registration Fees [Line 2]

The revenue projection is based on the number of attorneys registered in 2020. This amount does not include fees paid by new admittees.

B. 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, and the Chief Disciplinary Counsel who serves as the Fund Administrator.

As of June 2020, ODC has contracted an attorney, on a part time hourly basis, to process claims. With the addition of this attorney, it is anticipated that the Disciplinary Investigator assigned to the Lawyers' Fund will be able to spend more time working on ODC investigations.

As usual, a cost analysis performed by ODC reflects that the annual costs to ODC for these services are approximately \$150,000.00 per year, which includes personnel, office space, and the use of equipment and supplies.

In response to these costs, the Lawyers' Fund is increasing its contribution in 2021, and will provide \$100,000.00 in funding to the Disciplinary Board.

C. Salaries [Line 21]

The salaries are based upon the following 12 full-time positions:

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

The proposed 2021 salary expense for ODC attorneys, Disciplinary Investigators, and administrative staff reflects the return to full staffing. We are cognizant of the need to be fiscally prudent during the anticipated economic downturn and have budgeted for a maximum 2% salary increase for some employees. The Board will carefully review, and if necessary, readjust salaries at the beginning of 2021.

D. Professional Services

1. Disciplinary Board Professional Contract Services
[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.

2. Office of Disciplinary Counsel Professional Contract Services [Line 24]

This category includes the employment, on an hourly basis, of a Senior Assistant Disciplinary Counsel ("SADC").

3. Lawyers' Fund Staff Attorney [Line 25]

This category is for an attorney, paid on an hourly basis, to work solely on Lawyers' Fund claims. Part of the annual administrative fees paid by the Fund to the Board will be used to fund this position. This attorney offers service at a discounted rate.

E. Benefits

1. Retirement Plan-Employer's Contribution [Line 29]

10% of gross salary total with 12 employees = \$93,700

2. Medical Plans [Line 30]

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

(Current premium for UHA plan is \$532.00 per month.)

b. Additional benefit for employees enrolled in a
family plan \$350.00/month x 7 employees x 12
months = \$29,400.00

Total a + b = \$108,600.00 (12 employees, 7 with family
plans)

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

3. Bar Membership Fees [Line 37]

This category includes HSBA annual dues for all ODC
attorneys and ABA dues for one attorney.

a. HSBA Dues

	Admitted 5+ Years
HSBA	\$210.00
Processing Fee	15.00
Disciplinary Board	250.00
<u>AAP</u>	<u>34.00</u>
	509.00 x 4 attys

Total HSBA Dues: \$2,036.00

4. Parking/Bus Passes [Line 38]

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
DEAD	100.00
Inv	100.00
IT/Admin Specialist	<u>100.00</u>
Total	550.00

\$550.00/mo x 12 months = \$6,600.00

Bus Passes for MOA: \$70.00/mo x 12 months = \$840.00

TOTAL Line 38 = \$7,440.00

5. Employee Assistance Program (EAP) [Line 39]

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.

F. Stationery and Supplies [Line 51]

Due to COVID-19, and in order to protect our staff and members of the public, it is anticipated that the cost for supplies will increase in 2021 for the purchase of cleaning supplies, disinfectants, hand-sanitizers, and disposable masks and gloves.

G. Transportation and Subsistence-Inter-Island [Lines 54 and 55]

In 2021, the Disciplinary Board will continue to meet by video conference. The amounts listed will be only be used for necessary neighbor island travel.

H. Travel and Subsistence-Out of State [Lines 56 and 57]

In 2021, no travel will be permitted outside of Hawaii.

1. Conference Registration Fees [Line 58]

In 2021, it is anticipated that national conferences will be held online and this amount is budgeted for any online registration fees. Conferences attended by the Disciplinary Board and ODC are:

National Council of Lawyer Disciplinary Boards
National Organization of Bar Counsel
Organization of Bar Investigators
National Client Protection Organization (paid from the
Lawyers' Fund administration fee)

I. Publications/Subscriptions [Line 61]

In 2021, we will be cancelling most paper publications and subscriptions.

J. Office Rent-City Financial Tower [Line 62]

The lease expires on November 30, 2023. Until then, the full annual rate for 2021, with Operating Expenses, will be:

01/01/21 thru 11/30/21 = \$7635.32/month x 11 months =	\$83,988.52
12/01/21 to 12/31/21 = 7833.64/month x 1 month =	7,833.64
2021 CAM = \$7,612/month x 12 months =	91,344.00
TOTAL =	\$183,166.16

K. Repair and Maintenance

1. Leasing of Equipment [Line 63]

ODC will continue to lease selected office equipment, including the copiers (which also serves as high volume scanners), and a postage meter, as this is a cost-effective method of financing, maintenance of equipment, and periodic upgrades to the system.

2. Office [Line 64]

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

L. Membership in Professional Organizations [Line 70]

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, annual American Bar Association membership for one attorney at ODC.

CPR, Center for Professional Responsibility, is a group of ABA 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.

M. Computer Fees [Line 77]

In 2020, teleworking became our new normal and our budget reflects the technology needed to keep employees safe by allowing them to work from home. This category includes the cost of subscriptions to the following:

- Microsoft Office 365
- Adobe DC
- Dropbox (Cloud Storage)
- LogMeIn (Remote Desktop)
- Zoom (Teleconferencing)
- Quickbooks
- WestLaw (Legal Research-Public Records)
- Pacer (Federal Courts)
- Hawaii Information Service (Real Estate/Business Records)
- Time Matters (ODC's internal Case and Time Management System)
- Go Daddy (DB Hawaii Domain Name Registration)
- Luhina (High Speed Internet Access)

In addition to these subscriptions, we are working with Gum Design on a project to allow Hearing Officers and Respondents access to Disciplinary Board documents through a portal on the Disciplinary Board website, and electronic filing.

N. Data Management System Maintenance [Line 78]

Annual maintenance cost for Time Matters, ODC's case and time management software.

O. Litigation Costs [Line 80]

This category includes costs for any court or bank documents used in investigation of ODC cases, service of subpoenas and Supreme Court orders, transcription of hearings, interviews, and more recently the transcription of telephone calls from the public used to assist in the filing of complaints, storage of ODC investigative and administrative files, and any other costs associated with the investigation and litigation of cases by ODC and the Board.

P. Trusteeship Costs

Under Supreme Court Rule 2.20, trustees are appointed by the Court when 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 trusteeships open at ODC. 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 2021 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 2021, ODC will likely face increased pressure to retain outside trustees to allow ODC attorneys to timely investigate and prosecute cases.

1. Trusteeship Costs [Line 81]

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

There are currently three trusteeships in which ODC pays the cost of storage, two are on the neighbor island. Out of the three trusteeships, the Ueoka trusteeship is currently renting out two storage units at a cost of \$1,620.00 per month.

2. Contract Trustee [Line 83]

The Board expects to pay \$100,000.00 for the services of contract Trustees in 2021. There are currently 10 active paid trusteeships: Meyer Ueoka, Iris Okawa, Stuart Ing, Stuart Cowan, Harrison Chung, Leslie Fukumoto, Jeffrey Taylor, Ronald

Fujiwara, Lionel Riley, 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 or to otherwise seek recovery where the subject has assets. In trusteeships where probate has been opened, these actions 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.

Q. Storage Reduction Project [Line 89]

By June of 2020, ODC has approximately 1,000 boxes in storage at Access, a reduction from 2,255 in 2019. It is anticipated by the end of 2020, 250 more boxes will be destroyed and all remaining boxes will be removed for digitization on site.

ODC is also using funds from this project to fund a temporary, part time clerk to scan documents for digital storage.

ODC is currently renting out two suites at 1136 Union Mall to house 972 boxes for the Cora Avinante, Gary Tsuji, Richard Miyao, Harrison Chung, and Leslie Fukumoto trusteeships, which are currently active and where Trustees come in to inventory, access, and distribute client files. The files for the trusteeship of Lawrence Scott and June Ikemoto are also being held in this space pursuant to RSCH 2.20, where they need to be kept for a year before they can be destroyed.

R. Trust Account Audit Initiative [Line 90]

These funds were allocated but not spent in 2020 due to the COVID-19 pandemic. Two auditors have been retained, but are unable to commence work until it is safe to do so. This project is presently targeted for restart in spring, 2021.