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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 2022
(By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

Upon consideration of the 2022 proposed budget, submitted to this court on October 4, 2021 by the Disciplinary Board of the Hawai'i Supreme Court, and our review of the Hawai'i State Bar Association's letter dated September 24, 2021, wherein the HSBA offers no objection to the 2022 proposed Disciplinary Board budget, we note the Disciplinary Board seeks approval of a budget with projected revenues of \$1,585,000 and projected expenditures of \$1,957,250, and find that 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 2022, a copy of which is attached hereto, is approved.

DATED: Honolulu, Hawai'i, November 1, 2021.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins



2022 DISCIPLINARY BOARD BUDGET

	2021 Budget	2021 Estimated Actual	2022 Budget	Notes for 2022
1 Revenue				
2 Attorney Registration Fees	\$ 1,448,600	\$ 1,543,193	\$ 1,460,000	Note A
3 Interest on Bank Accounts	\$ 10,000	\$ 3,862	\$ 5,000	
4 Lawyers' Fund	\$ 100,000	\$ 100,000	\$ 120,000	Note B
5				
6 TOTAL REVENUE	\$ 1,558,600	\$ 1,647,055	\$ 1,585,000	
7 Expenditures				
8 Salaries				Note C
9 Chief Disciplinary Counsel				
10 Deputy Chief Disciplinary Counsel				
11 Assistant Disciplinary Counsel				
12 Assistant Disciplinary Counsel				
13 Assistant Disciplinary Counsel				
14 Disciplinary Investigator				
15 Disciplinary Investigator				
16 Disciplinary Investigator				
17 Manager Office Administration				
18 IT and Administrative Specialist				
19 Legal Clerk				
20 Disciplinary Board Administrative Dir				
21				
22 TOTAL SALARIES	\$ 937,000	\$ 872,424	\$ 941,158	
Disciplinary Board Professional Contract Service				
23 (includes Board Counsel)	\$ 20,000	\$ 15,433	\$ 20,000	Note D.1
24 ODC Professional Contract Services	\$ 30,000	\$ 31,903	\$ 120,000	Note D.2
25 LF Staff Attorney	\$ 60,000	\$ 59,221	\$ 60,000	Note D.3
26				
TOTAL SALARIES AND PROFES-				
27 SIONAL CONTRACT SERVICES	\$ 987,000	\$ 978,981	\$ 1,141,158	
28				
29 Benefits:				
30 Retirement	\$ 93,700	\$ 73,288	\$ 94,115	Note E.1
31 Medical Plans	\$ 108,600	\$ 92,400	\$ 114,480	Note E.2
32 Group Life Insurance	\$ 6,000	\$ 4,400	\$ 5,000	

2022 DISCIPLINARY BOARD BUDGET

	2021 Budget	2021 Estimated Actual	2022 Budget	Notes for 2022
33 FICA	\$ 70,000	\$ 57,624	\$ 68,434	
34 Workers' Compensation	\$ 3,500	\$ 3,000	\$ 3,000	
35 Unemployment Comp.	\$ 9,000	\$ 8,000	\$ 9,000	
36 TDI	\$ 6,000	\$ 6,052	\$ 6,500	
37 Long Term Disability Ins.	\$ 5,000	\$ 3,600	\$ 5,000	
38 Bar Membership Fees	\$ 2,036	\$ 2,036	\$ 2,545	Note E.3
39 Parking	\$ 7,440	\$ 8,700	\$ 12,000	Note E.4
40 EAP	\$ 1,200	\$ 1,000	\$ 1,000	Note E.5
41 TOTAL BENEFITS	\$ 312,476	\$ 260,100	\$ 321,074	
42				
43 Current Expenses:				
44 Services on a Fee Basis				
45 Accountant Fees	\$ 5,016	\$ 5,016	\$ 6,250	
46 IT Services	\$ 15,000	\$ 12,600	\$ 12,000	
47 Cyber-Security Consultant	\$ -		\$ 12,000	
48 Pension Services Corp.	\$ 4,000	\$ 2,200	\$ 3,000	
49 Akamai Messenger Service	\$ 4,000	\$ 2,200	\$ 2,500	
50 Ceridian	\$ 4,000	\$ 3,200	\$ 3,200	
51 CPA Review of Financials	\$ 10,100	\$ 21,142	\$ 7,000	
52 Stationery & Supplies	\$ 10,000	\$ 5,000	\$ 5,000	
53 Postage/Postal Charges	\$ 3,000	\$ 6,142	\$ 6,000	
54 Telephone	\$ 12,500	\$ 9,669	\$ 10,000	
55 Trans (Inter-Island)	\$ 1,000	\$ -	\$ 8,200	Notes F.1
56 Subsistence (Inter-Island)	\$ 250	\$ 500	\$ 1,000	Notes F.2
57 Trans (Out of State)	\$ -	\$ -	\$ 600	Notes G.1
58 Subsistence (Out of State)	\$ -	\$ -	\$ 1,715	Notes G.2
59 Conference Registration Fees	\$ 1,000	\$ 1,000	\$ 1,000	Notes G.3
60 Car Rental	\$ 500	\$ -	\$ 500	
61 Ads/Legal Notices	\$ 1,000	\$ 1,887	\$ 500	
62 Publications/Subscriptions	\$ 500	\$ 226	\$ -	
63 Office Rent (CFT)	\$ 183,166	\$ 132,584	\$ 89,567	Note H
64 Office Rent (1136 Union Mall #201)		\$ 17,491	\$ 17,491	Note I
65 Office Rent (1136 Union Mall #803)		\$ 5,409	\$ -	
66 R & M (Leasing of Equipment)	\$ 15,000	\$ 12,000	\$ 12,000	Note J.1

2022 DISCIPLINARY BOARD BUDGET

		2021 Budget	2021 Estimated Actual	2022 Budget	Notes for 2022
67	R & M (Office)	\$ 1,000	\$ 500	\$ 500	Note J.2
68	Insurance				
69	Commercial Package	\$ 1,000	\$ 1,500	\$ 1,500	
70	Umbrella	\$ 1,000	\$ 1,000	\$ 1,000	
71	Erisa Bond	\$ -	\$ -	\$ 260	
72	Director's & Officers Liability	\$ 4,200	\$ 5,400	\$ 5,500	
73	Professional Organization Dues				Note K
74	NOBC	\$ 1,000	\$ 600	\$ 600	
75	ABA (CPR)	\$ 150	\$ 175	\$ 175	
76	CPR	\$ 100			
77	NCLDB	\$ 100	\$ 100	\$ 100	
78	OBI	\$ 150	\$ 150	\$ 150	
79	Hawaii Employers Council	\$ 2,500	\$ 1,443	\$ 1,610	
80	Computer Fees	\$ 35,000	\$ 35,000	\$ 35,000	Note L
81	Data Management System Maintenance	\$ 5,000	\$ 9,355	\$ 10,000	Note M
82	Employee Training	\$ 2,500	\$ 650	\$ 2,500	
83	Litigation Costs	\$ 60,000	\$ 30,000	\$ 30,000	Note N
84	Trusteeship Costs	\$ 60,000	\$ 52,000	\$ 30,000	Note O.1
85	Trusteeship Costs-Recovered		\$ -		
86	Contract Trustee	\$ 100,000	\$ 73,800	\$ 100,000	Note O.2
87	Contract Trustee Costs-Recovered		\$ -		
88	Judgment Filing Costs	\$ 300	\$ 150	\$ 300	
89	Miscellaneous	\$ 500	\$ 500	\$ 500	
90	DB Hearing Committee Seminar	\$ -	\$ -	\$ -	
91	HSBA Credit Card Fee Charge	\$ 28,000	\$ 29,880	\$ 30,000	
92	Storage Reduction Project	\$ 100,000	\$ 68,000	\$ 32,000	Note P
93	2021 Downsize		\$ 95,000		Note Q
94	Trust Account Audit Initiative	\$ 10,000	\$ -	\$ 10,000	Note R
95	TOTAL CURRENT EXPENSES	\$ 682,532	\$ 643,469	\$ 491,218	
96					
97	Capital Expenses:				
98	Equipment:				
99	Computer Hardware	\$ 1,000	\$ 4,100	\$ 2,000	
100	Recorders, Tapes, etc.	\$ 500	\$ 6,500	\$ 300	

COMPUTATION OF DISCIPLINARY BOARD FUNDS IN 2022

A. PROJECTED 2022 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	237	\$ 600.00	\$ 142,200.00
			<u>\$ 1,460,000.00</u>

*Based on 2021 Attorney Registration Receipts from HSBA as of April 19, 2021

B. CALCULATION OF 2022 TOTAL AVAILABLE REVENUE.

2022 ARS Receipts*	\$ 1,460,000.00
Interest on Bank Accounts	\$ 5,000.00
Lawyers' Fund Admin Fee	\$ 120,000.00
	<u>\$ 1,585,000.00</u>

C. CALCULATION OF CARRYOVER AT DECEMBER 31, 2021

2021 Projected Revenue	\$ 1,647,055.00
2021 Projected Expenditures	\$ 1,890,990.00
2021 Excess of Expenditure Over Revenue Over	\$ (243,935.00)
December 31, 2020 Carryover	\$ 846,719.00
	<u>\$ 602,784.00</u>

D. TOTAL REVENUE FOR 2022 \$ 2,187,784.00

8/24/2021

NOTES

A. Attorney Registration Fees [Line 2]

The revenue projection is based on the 2021 attorney registration receipts received by HSBA as of April 19, 2021.

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

ODC currently provides part-time administrative and professional support to the Lawyers' Fund in the form of two administrative staff members, one Disciplinary Investigator for processing Lawyers' Fund claims, and the Chief Disciplinary Counsel who serves as the Fund Administrator.

In 2021, ODC continues to contract an attorney, on a part-time, hourly basis, to process claims and serve as Fund Counsel.

In a cost analysis performed by ODC in 2021, the annual funds spent by ODC for personnel, the contract attorney, office space, and the use of equipment and supplies, totaled \$115,219.68.

In response to the cost analysis, the Lawyers' Fund has agreed to increase its contribution in 2022, and will provide \$120,000.00 in funding to the Disciplinary Board.

C. Salaries [Line 8]

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

- 1 - Chief Disciplinary Counsel
- 1 - Deputy Chief Disciplinary Counsel
- 3 - Assistant Disciplinary Counsel
- 3 - Disciplinary Investigator
- 1 - Manager Office Administration
- 1 - IT and Administrative Specialist
- 1 - Legal Clerk
- 1 - Disciplinary Board Administrative Director

In 2021, only two employees received a salary increase, one based upon an employment contract and the other due to the

increased responsibilities of creating and maintaining a secure remote workplace for our staff during the Covid lockdown.

In 2022, we are budgeting for a maximum 6% increase for most employees (3% retroactively for 2021 and 3% for 2022). This is for budgeting purposes only, as the final salary amount will be based upon the individual employee's annual performance review.

As in 2021 and again in 2022, the budget reflects no salary increase for the Chief Disciplinary Counsel and the Disciplinary Board's Administrative Director. Thus, the total salary increase for the ODC will not exceed 3%.

D. Professional Services

1. Disciplinary Board Professional Contract Services
[Line 23]

This category includes the purchase of outside legal services on an "as needed" basis from an employment, tax, and ERISA attorneys. The Board [general] Counsel is also an outside contract attorney, who provides legal research and advice to the Board in its adjudicatory and administrative roles. All offer discounted rates to the Board.

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

This category includes the employment, on a part-time, hourly basis, of a Senior Disciplinary Counsel ("SDC") and services of any outside attorneys (Special Disciplinary Counsel) when ODC or the Disciplinary Board are conflicted from a disciplinary case.

In accord with the Board's 2021 strategic plan, in 2022, this category also includes additional funding for the use of outside contract attorneys from the neighbor islands to investigate disciplinary cases, or otherwise provide flexibility in staffing allocation.

3. Lawyers' Fund Staff Attorney [Line 25]

This category is for an attorney, paid on a part-time, hourly basis, to work solely on Lawyers' Fund claims. Part of

the annual administrative fees paid by the Lawyers' Fund to the Board will be used for this position. This attorney offers service at a discounted rate.

E. Benefits

1. Retirement Plan-Employer's Contribution [**Line 30**]

10% of gross salary total with 12 employees = \$90,117

2. Medical Plans [**Line 31**]

a. \$570.00/month x 12 employees x 12 months =
\$82,080.00

(Current premium for UHA plan is \$564.00 per employee per month.)

b. Additional benefit for employees enrolled in a family plan \$450.00/month x 6 employees x 12 months = \$32,400.00

Total a + b = **\$114,480.00** (12 employees, 6 with family plans)

Remaining benefit amounts [lines 32-37] are based on either a percentage of salary total, or actual costs.

3. Bar Membership Fees [**Line 38**]

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 5 attys

Total HSBA Dues: \$2,545.00

4. Parking [**Line 39**]

Due to the recent downsize in office space, ODC is only allowed four unreserved parking stalls in City Financial Tower, each at \$250.00 per month. Parking paid for the following positions:

Chief Disciplinary Counsel
Deputy Chief Disciplinary Counsel
IT/Admin Specialist
Disciplinary Board Administrative Director

Employees in these managerial positions are on-call and need access to the building and parking, 24/7.

\$250.00/mo x 4 employees x 12 months = **\$12,000.00**

TOTAL Line 48 = **\$12,000.00**

5. Employee Assistance Program (EAP) [**Line 40**]

This [well-being] program assists our employees, and their family members, with personnel-related and other problems, by providing individual employee counseling, family counseling, and/or mediation. This has been an invaluable resource to employees as they navigate balancing work and home life during remote work, and other stressors.

F. Transportation and Subsistence-Inter-Island
[**Lines 55 and 56**]

1. Inter-Island [**Line 55**]

In 2021, the Disciplinary Board continued to meet by video conference. The Board is expected to encourage continued remote attendance where possible as a matter of financial conservation.

In 2022, it is anticipated that some Board members, if they choose, will be able to return to in-person meetings for part of the year and this budget reflects those anticipated travel costs. Thus, the budget anticipates three board members for monthly Board meetings at \$200.00 per trip.

3 x \$200.00 per trip x 12 months = \$7,200.00

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

5 x \$200 per trip = \$1,000.00

Total Line 55 = **\$8,200.00**

2. Subsistence (Inter-Island) [Line 56]

Includes parking validation at ODC, and any other related expenses.

Total Line 56 = **\$1,000.00**

G. Travel and Subsistence-Out of State [Lines 57 and 58]

In 2022, no travel will be permitted outside of Hawaii for ODC staff. The current budgeted amount is for costs of a Board member attending the annual National Council of Lawyer Disciplinary Boards conference in 2022.

1. Travel-Out of State [Line 57]

National Council of Lawyer Disciplinary Boards [Seattle, WA]

Round trip airfare \$600.00

Total Line 57 - \$600.00

2. Subsistence-Out of State [Line 58]

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

Total Line 58: \$1,715.00

3. Conference Registration Fees [Line 59]

In 2022, in addition to attendance at the National Council of Lawyer Disciplinary Boards, ODC will again participate in

national conferences online. Conferences attended by the Disciplinary Board and ODC are:

National Council of Lawyer Disciplinary Boards
National Organization of Bar Counsel Mid-Year and Annual Meeting (2 ODC attorneys at each meeting)
Organization of Bar Investigators (1 Disciplinary Investigator)
National Client Protection Organization (paid from the Lawyers' Fund administration fee)

H. Office Rent-City Financial Tower [Line 63]

In 2021, the office space at 201 Merchant Street was reduced from 4,958 rentable sq. ft. to 2,392 sq. ft. The new amended lease expires on November 30, 2026. The full annual rate for 2022, with Operating Expenses, will be:

01/01/22 - 11/30/22 = \$3,779.36/month x 11 months =	\$41,572.96
12/01/22 - 11/30/23 = \$3,924.88/month x 1 month =	3,924.88
2022 CAM = \$3,672.43/month x 12 months =	44,069.16
	TOTAL = \$89,567.00

I. Office Rent-1136 Union Mall [Line 64]

In 2022, ODC will continue renting a small office space (696 rentable sq. ft.) at 1136 Bishop Street (Union Mall) to process and store boxes in active trusteeship cases.

The cost of the space remains at \$1,457.59/mo x 12 months = \$17,491.08.

J. Repair and Maintenance

1. Leasing of Equipment [Line 66]

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 and maintaining equipment.

2. Office [Line 67]

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

K. Membership in Professional Organizations [Lines 74-79]

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.

ABA, annual American Bar Association membership for one attorney at ODC. This membership also includes the Center for Professional Responsibility (ABA-CPR), which provides resource materials (including articles, opinions, and case law) on ethics and 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.

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 80]

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. The cost of this technology is more than offset by the reduction in office rents that the conversion to remote work made possible. This category includes the cost of subscriptions to the following:

- Microsoft Office 365 (desk top office suite)
- Zoom (teleconferencing)
- LogMeIn (Remote Desktop)
- Westlaw (Legal Research-Public Records)
- Pacer (Federal Legal Research)
- Hawaii Information Service (Real Estate/Business Records)
- Luhina (Internet)

Adobe (pdf creation/editing software)
Dropbox (Cloud Storage)
Quickbooks (accounting software)

In addition to these subscriptions, we are continuing our work with local website developer Gum Design on a project to allow Hearing Officers and Respondents to upload documents for filing with the Disciplinary Board through the Board website, dbhawaii.org.

M. Data Management System Maintenance [Line 81]

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

N. Litigation Costs [Line 83]

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 (ADA reasonable accommodations), storage of ODC investigative and administrative files, and any other costs associated with the investigation and litigation of cases by ODC and the Board.

O. 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 oversight of these proceedings.

There are approximately 41 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 remain steady in 2022 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 2022, ODC will likely face increased pressure to retain outside trustees to allow ODC attorneys to timely investigate and prosecute cases.

1. Trusteeship Costs [Line 84]

Costs for postage, shipping, storage, postage, together with the publication of notices.

2. Contract Trustee [Line 85]

The Board is budgeting \$100,000.00 for the services of compensated contract trustees in 2022. There are currently 12 active paid trusteeships: Meyer Ueoka, Harrison Chung, Leslie Fukumoto, Lionel Riley, Richard Miyao, Reed Rohrer, Gerard Lee Loy, David Mikonczyk, Christopher Bouslog, Randal Nagatani, Jefferson Willard, and Leon Pasker.

While compensated trustees may appear more expensive than volunteer *pro bono* trustees, oftentimes the expedited manner in which cases are disposed of by these "professional" trustees result in savings by reduced storage and processing costs.

In 2021, no costs were recovered from the estates of deceased attorneys. In 2022, while ODC will remain vigilant to seek recovery of costs, none can be reasonably predicted.

P. Storage Reduction Project [Line 92]

In 2021, as part of the strategic plan, ODC is continuing to focus on becoming "paperless." Thousands of boxes of files have been converted to digital and destroyed, but the pandemic has hampered the initial target completion schedule and some 1,500 boxes of files remain.

The \$32,000 budget reflects the unused portion of the \$100,000 budgeted and \$68,000 expended in 2021. After 2022, no further funds will be budgeted for this category.

Q. 2021 Downsize of Office Space [**Line 93**]

This line item was not anticipated or budgeted for in the 2021 budget.

These funds were used to create an efficient workspace for the remaining portion of the surrendered office space. Employees have an option to come into the office to work on scheduled days, or work remotely. The original dedicated Board Room has been converted into a multi-purpose room that will facilitate board meetings, formal hearings, class room, or "town hall" programs, to meet in hybrid in-person and online Zoom fashion.

R. Trust Account Audit Initiative [**Line 94**]

These funds were allocated but not spent in 2021 due to the COVID-19 pandemic. Two auditors have been retained. This project is presently targeted for restart in spring, 2022.

08/24/2021