

MINUTES

DISCIPLINARY OVERSIGHT COMMITTEE

March 13, 2002

9:30 a.m.

Chubb - Warren, N.J.

Members in Attendance:

Lanny S. Kurzweil, Esq., Chair
Kathryn Flicker, Esq., Vice-Chair
Robert Boyle
Elizabeth Buff
John Degnan, Esq.
Michael K. Furey, Esq.
Carol Gershaw
Harriet Kass
Raymond Londa, Esq.
Raymond Ocasio

Also in Attendance:

David E. Johnson, Esq. (OAE Director)
Janet Miller, Esq. (Statewide Coordinator)
Richard J. Badolato, Esq. (President-Elect, NJSBA)
Daniel M. Waldman, Esq. (President, NJSBA)
Harold Rubenstein, Esq. (Exec. Director, NJSBA)

Paula Granuzzo, Esq. (Staff)
Denise McCollum (Staff)

I. Minutes

The Committee unanimously approved the draft Minutes of the December 5, 2001, meeting, with minor revisions.

II. Liaison Justice

Paula Granuzzo informed the Committee that the Court had designated Justice LaVecchia as Liaison Justice to the DOC, the OAE, and the DRB. She further informed the Committee that she had sent some background materials to Justice LaVecchia, such as membership lists, meeting minutes and agendas, and quarterly reports for the year 2001. Chair Kurzweil shared with the Committee the positive experience the EFC (predecessor to the

DOC) had with its Liaison Justice and believed that the DOC would derive a similar benefit through the Court's appointment of Justice LaVecchia to serve as its liaison.

III. Meeting with NJSBA Representatives

Several years ago, the DOC extended to the New Jersey State Bar Association a standing invitation to attend the Committee's March quarterly meeting each year to exchange information and ideas, and/or to discuss any concerns it might have in respect of the attorney disciplinary system. Pursuant to that invitation, NJSBA Executive Director, Harold Rubenstein, President Daniel Waldman, and President-Elect Richard Badolato attended the Committee's meeting. Mr. Kurzweil opened the discussion by welcoming the representatives to the meeting and by inviting any comments or concerns they might wish to share.

Mr. Waldman identified three observations the representatives wished to discuss. First, from his review of the Committee's Minutes, and more particularly the compliance rates in the various volunteer district ethics committees, Mr. Waldman noted somewhat of a drop - particularly in Essex County. Mr. Waldman asked if the DOC could shed any light on that situation and further asked if the NJSBA could lend any assistance.

Mr. Kurzweil gave the Association representatives an overview of the reports the OAE submits to the DOC in respect of DEC performance. He then asked Mr. Johnson to address Essex's specific performance. Mr. Johnson informed the Association representatives Essex County district committees had performed well in its pending investigations for this quarter, but had performed poorly in respect of their pending hearings. In response to a specific question by Mr. Rubenstein, Mr. Johnson attributed past poor performance in West Essex to inconsistency in leadership - particularly in the disposition of hearings. He explained that at one point, the Statewide Coordinator Janet Miller had to step in to take over administration of hearings in those districts. She set up standing hearing panels and standing hearing dates, and used more special ethics masters to preside over the hearings. By taking these measures, Ms. Miller eventually reduced the number of pending hearings to a point where she was able to turn the administration of the hearings back over to those districts.

Ms. Miller indicated that although the hearing compliance rates in the Essex districts are still extremely low, the

relatively low number of cases in those districts, and particularly in West Essex, skews those rates significantly. Mr. Johnson and Ms. Miller added that they would closely monitor the pending hearings in those districts in an effort to minimize further backlogs.

Next, Mr. Waldman expressed the Association's appreciation for the DOC's pursuit of costs assessments and collections, noting the effect the revenues collected therefrom on the budget and ultimately on the annual registration fee paid by all New Jersey-licensed attorneys. Again, he offered the Association's assistance, should the DOC wish any. Mr. Kurzweil informed Mr. Waldman that the DOC was attempting to track costs assessments and collections closely and that it was attempting to receive reports on the status of costs collections on a quarterly basis and in conjunction with its consideration of the AOC's quarterly reimbursement requests. He further informed Mr. Waldman that a discussion regarding possible reevaluation of basic administrative costs had been deferred pending the disposition of other unrelated, but pressing, issues.

Finally, Mr. Waldman urged the Committee to reconsider the issue of compensation of attorney-trustees, especially in the context of extraordinary expenses and time. Mr. Degnan explained that the DOC already had made its recommendation to the Court on the subject sometime ago. Mr. Degnan informed Mr. Waldman that the Committee had recommended to the Court that it allow an attorney's service as an appointed attorney-trustee to count towards his or her pro bono obligation. Ms. Granuzzo informed Mr. Waldman that the Court had accepted that recommendation and that she had spoken with Steven Bonville, who indicated that a change would be made in the existing pro bono exemptions to include service as an attorney-trustee, with certain time requirements.

IV. OAE's Report on Pending Caseloads and Other Pending Projects/Matters

Janet Miller reported to the Committee that for the period ending February 28, 2002, the volunteer committees overall had achieved 84% compliance with the Court's time goals for the completion of investigations, which represented an improvement over the overall 79% compliance rate as of the end of last quarter (December 2001). She further reported that the volunteer districts had achieved 61% compliance with the Court's time goals for the completion of hearings for the quarter, which

represented a slight increase over their hearing compliance rates for last quarter (58%). Ms. Miller indicated that many of these hearings involve multiple grievants, so they require more hearing days. With the summer months approaching, Ms. Miller planned to push the hearings dispositions before losing members whose terms will expire in the Fall and before existing members begin to schedule their vacations.

Next, Mr. Johnson reported on the OAE's over goal investigations. Mr. Johnson submitted to the DOG a report on the OAE's 40 oldest investigations, noting that the OAE was experiencing backlogs significantly due to reassignments necessitated by vacancies in investigative staff. He told the Committee that Judge Williams had given the OAE an exception to the hiring freeze to enable it to continuously recruit, but that the office recently had lost an investigator to a federal agency. Mr. Johnson indicated that he has learned from the director of the personnel department that the waiver will apply to a replacement for this individual as well. However, the OAE's waiver request was denied in respect of its ethics analysts.

In discussing in more detail the ramifications of the current State budget crisis in respect of the attorney disciplinary budget, Mr. Kurzweil commented preliminarily that the Committee would be looking for a relatively conservative proposed attorney disciplinary budget. Mr. Johnson indicated that he did not believe that the system should actively seek to cut back unnecessarily, unless the particular resource was not needed to "get the job done," such as travel. Mr. Johnson told the Committee that he did not anticipate proposing any staffing cuts and/or layoffs in the 2003 budget.

Mr. Johnson then reported to the Committee on the status of noting that the ethics system portion is moving slower than anticipated due to design problems. However, Mr. Johnson indicated that he hoped to have a prototype ethics system in place to test within the next month.

Finally, Mr. Johnson brought to the Committee's attention new legislation requiring business registration. According to Mr. Johnson, this law would require DEC secretaries and special masters to file certain forms with the Division of Revenue. Mr. Johnson indicated that the forms were substantial and would require a significant amount of time to complete. He was concerned that if DEC secretaries and special masters had to comply with the law, the OAE would encounter more difficulty

than it already does in finding attorneys willing to serve in those capacities - and particularly DEC secretaries, who receive emoluments that don't begin to approximate the costs and expenses borne by the attorney who serves as a DEC secretary. Thus, Mr. Johnson has submitted a memo to the Administrative Director asking advice on whether DEC secretaries and special masters are covered by the requirements of the new law. He has learned already that special masters must comply, but is still waiting to hear back from the Director's Counsel whether DEC secretaries must comply. He expects to hear from the Director's office within the next month.

V. Discussion of Evaluation Status

Ms. Granuzzo reported to the Committee on the status of the evaluation project. Ms. Granuzzo indicated that the Treasurer had approved the Selection Committee's Report and recommendation selecting Validata as the successful bidder. She further indicated that Treasury would issue a notice of intent to all of those persons/entities who submitted a bid on the project, informing them of the intention to award the contract to Validata. If no one objected within a ten day period, then Treasury would issue a contract to Validata.

Ms. Granuzzo also informed the Committee that while it was possible that a contract could be signed by the end of the month, she had recently received from the Administrative Director's office a memo indicating that all surveys/questionnaires issued or administered by a Supreme Court committee must receive pre-issuance approval from the Director, the Judiciary Research Council, the Court, or all three. Ms. Granuzzo further indicated that this could pose a potential problem in terms of completion of the project within the eight-month time frame set forth in the RFP. She further indicated that in an attempt to gauge the delay the Committee might anticipate by compliance with the pre-approval requirement, she spoke with the Chair of the Judiciary Research Council, Marilyn Slivka. Ms. Granuzzo told the DOG that Ms. Slivka believed that even under the best of circumstances, the Committee would not be able to complete its review and approval of the surveys within the time frames set forth in the RFP.

Ms. Granuzzo expressed concern that the pre-approval requirement not only would delay completion of the project further and outside of the eight-month period established by the RFP, but also that it might result in some additional costs to

the DOG, such as cost of living-type increases in the vendor's price and/or other expenses not anticipated by the extension of the contract beyond that eight-month period.

Following Ms. Granuzzo's report on the status of the evaluation, the Committee questioned whether the evaluation should even go forward at this point, particularly in light of the current budget crisis and of the detailed reports the DOG submits to the Court on a quarterly basis. Many of the members believed that the information that would be gained through the evaluation would not be particularly useful to the Court, and that the reports the DOG receives indicates that the system is functioning well. Although others disagreed on the usefulness of the information to be gathered by the evaluation, all agreed that the Committee should communicate with the Court to determine whether it still wanted the DOG to proceed with the evaluation, particularly in light of the budget crisis and the current statistical reporting. All agreed that if the Court indicated that it wished the Committee to proceed with the evaluation, the Committee should request that the Court waive the survey pre-approval process.

Chair Kurzweil indicated that he would attempt to communicate with Justice LaVecchia to share the DOC's views with her and to solicit whatever input she might wish to share on the subject. Ms. Granuzzo will prepare a short summary of the evaluation project for Chair Kurzweil and for Justice LaVecchia in preparation for whatever discussion they might have on the subject. In addition, Mr. Kurzweil asked Ms. Granuzzo to speak with Purchase and Property representatives to learn if there are any limitations on and liabilities to the DOG if the Court decides to authorize abandonment or delay of the evaluation.

There being no further business, the meeting was adjourned, after which the Committee met in executive session.

NEXT MEETING:

Wednesday, June 12, 2002
9:30 a.m. - Chubb
Warren, N.J.

Minutes prepared by: Paula T. Granuzzo
Dated: May31, 2002