

MINUTES

DISCIPLINARY OVERSIGHT COMMITTEE

June 18, 2003

9:30 a.m.

Chubb & Son - Warren, N.J.

Members in Attendance:

Lanny S. Kurzweil, Esq., Chair
Kathy Flicker, Esq., Vice-Chair
Richard Bland, Esq.
Robert Boyle
Paris Eliades, Esq.
Michael Furey, Esq.
Harriet Kass

Also in Attendance:

David E. Johnson, Esq. (OAE Director)
Robyn M. Hill, Esq. (DRB)
Janet Miller, Esq. (Statewide Coordinator)

Justice Jaynee LaVecchia (Court Liaison)

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

Chair Kurzweil welcomed Supreme Court Liaison Justice Jaynee LaVecchia, thanking her for the Court's interest in the Committee's business and for her guidance on Committee issues. Justice LaVecchia expressed the Court's appreciation and respect for the DOC's workings and encouraged continued communication between the Committee and the Court through her. Justice LaVecchia informed the Committee that the Court would be discussing the DOC's response to the NJSBA's budget suggestions during this Friday's conference.

I. Minutes

The Committee unanimously approved the Minutes of the March 19, 2003, meeting.

II. Report of the Budget Subcommittee

Chair Kurzweil reviewed the current schedule for receipt and review of the proposed 2004 budget, as follows: the Budget Subcommittee is to receive the proposed budget at least one week in advance of its first scheduled meeting on August 1, 2003. The Subcommittee will review the proposed budget at that first meeting and will flag any concerns it has regarding any aspect of it. The Subcommittee will again meet on September 5, 2003, to further fine-tune the budget for presentation to the full Committee on September 17, 2003.

Chair Kurzweil further reported that he had participated in a telephone conference with Jack McFeeley, Chair of the LFCP, and various other trustees of the Fund regarding rising registration expenses. Mr. Kurzweil explained that the DOC currently pays 50% of registration expenses incurred each year. The DOC budgeted approximately \$300,000 for this calendar year, representing the DOC's 50% share of the total registration expenses. Mr. Kurzweil reported that Mr. McFeeley and the other Fund representatives were enthusiastic to consider creative alternatives to current billing practices and procedures to minimize rising registration expenses. Among the alternatives discussed were electronic billing, biennial billing, and outsourcing of certain billing functions.

Ms. Higgins reported that both she and Shelley Webster also participated in that telephone conference. Ms. Higgins indicated that the Fund's concern dealt primarily with information gathering. She reported that she and Ms. Webster had devised a work plan, which they intended to present to the Trustees in the near future.

Mr. Kurzweil asked Mr. Johnson whether e-mail addresses were collected as part of the registration process, noting that e-mail addresses would be necessary to conduct the billing process electronically. Mr. Johnson indicated that such addresses are not currently collected and further informed the Committee that in order to do so in the future, the current system would have to be reconfigured, implicating budget issues. For that reason, he indicated, any change in or addition to the information currently gathered in the billing process would have to be approved by the Court.

Finally, Mr. Kurzweil reviewed Ms. Granuzzo's May 30, 2003, memo to Stephen Townsend regarding the DOC's response to the NJSBA's budget proposals.

III. OAE/DRB Vacancy and Backfill Requests

Chair Kurzweil reported that the OAE had sought and had been granted permission to fill a vacancy in the District Investigations Group created by the resignation of one of the investigators within that group. Mr. Kurzweil reviewed the existing expedited procedure for dealing with vacancy and backfill requests. Mr. Johnson indicated that the current procedure was working well and that he had encountered no delays or problems in following that procedure.

IV. OAE Report on Pending Caseload

Statewide Coordinator Janet Miller reported on the OAE's pending caseload for the period ending May 31, 2003. Ms. Miller reported that the volunteer districts had achieved an overall 81% compliance rate for the completion of their pending investigations within the time goals established by the Court, which represented a slight drop from last quarter's compliance rate (85%). Ms. Miller indicated, however, that the volunteer districts had improved over last quarter's compliance rate for hearings, noting that there is frequently a trade-off in compliance rates between hearings and investigations.

Chair Kurzweil asked Ms. Miller if she had noted any trends in performance/compliance. Ms. Miller indicated that although compliance rates have been stable of the past few years, she did notice peaks and valleys at certain times of the year and further that higher performance sometimes was achieved by increased pressure. Mr. Kurzweil asked Ms. Miller to notify him of the dates of the organizational/officers meetings in the Fall, offering to attend those meetings. Justice LaVecchia also asked to receive notification of those dates.

Finally, Chair Kurzweil asked Staff to send gold-star letters out to the districts that had achieved at least 90% compliance in their investigations. Ms. Miller told the Committee that she believed that these letters of recognition continued to positively motivate and reinforce the DEC's performance. Mr. Bland related a conversation he had recently with a DEC officer, who confirmed his appreciation of the DOC's recognition of his district's efforts.

Following the Committee's discussion about the DEC compliance rates, Ms. Miller distributed a copy of the newsletter she prepares and distributes to all DEC members on a quarterly basis. The newsletter contains a short summary of discipline imposed in the quarter, procedure tips to guide the various DEC's, relevant disciplinary-related notices, a summary of appeals granted by the Board over the quarter, and other

general information. Mr. Kurzweil thanked Ms. Miller for her efforts to keep the various district committees apprised of the results of their work and of changes and developments in procedures, etc. He asked whether the OAE had considered e-mailing such letters to the DEC members. Ms. Miller indicated that she does email some members, but is careful to redact any information that might identify the respondent in those matters that are not public. This is necessary because the AOC has not yet concluded its investigation of security issues arising out of the electronic transmission of confidential information.

Mr. Johnson reported on the compliance rates and performance of both the District and the Complex Investigations Groups. In the District Group, Mr. Johnson reported that the OAE had begun to deal with the prolonged "illness" of one the investigators through the discipline process. He reiterated, however, that this was a multi-step, tedious and lengthy process that carried a right to hearing and appeal at each step.

Mr. Johnson next reported on the transfer of two of the investigators from the District Group to the Complex Group. Specifically, Mr. Johnson indicated that they had completed the twenty-four investigations the OAE had targeted for completion. Moreover, he indicated, the volunteer attorney investigators within the District V had been handling new investigations well. The OAE turned over no old investigations to that District.

Mr. Johnson indicated that 67% of all pending Complex investigations were within goal. Mr. Johnson told the Committee that although the Complex Group was working diligently to reduce the backlog, the number of new cases added to the Complex caseload continued to grow, impeding overall progress. In fact, Mr. Johnson reported, the number of cases added to the Complex Group had doubled since 1999, noting that there is no prosecutorial discretion to decline to investigate certain cases. He anticipated that the mounting backlog problem would need to be addressed by the Budget Subcommittee in the upcoming budget process through the addition of personnel, unless it wished to explore other alternatives. For example, Mr. Johnson suggested that if the Committee did not support additional resources, then it might consider an adjustment of expectations by enlarging time goals, by allowing the Director prosecutorial discretion to decline to investigate certain grievances, and/or by attaching a statute of limitations to the prosecution of ethics offenses. Mr. Johnson told the Committee that he would analogize the current District XIV backlog to where the system stood before 1995, when the OAE had to decline to accept all new cases (except misappropriation cases) from the various district

ethics committees, noting the domino effect that had on the caseloads of the DEC's.

Ms. Flicker also expressed some concern at the continuing backlog and the addition of new cases to the Complex caseload, noting that the numbers alone are not always completely reflective of the reality. For example, she noted, the addition of just one "bombshell" case could wreak havoc on the progress of the Complex Group. Ms. Flicker believed that it would be difficult to deal with the mounting backlog and ever-increasing addition of new cases without the addition of personnel.

The Committee determined to continue its discussion of the issue following the Budget Subcommittee's review and recommendations in respect of the proposed 2004 budget.

V. DRB's Costs Collection and Monthly Reports

Robyn Hill delivered the Disciplinary Review Board's Costs Report for the period January 1, 2003 through March 31, 2003. The Committee previously had received a hard copy of the Board's costs collection report for the period. According to the report, although the reporting period covered 1/1/03 through 3/31/03, assessments were current only through January 6, 2003 (month discipline imposed). During the reporting period, a total of \$60,143.41 was assessed. A total of \$48,585.83 was collected during the reporting period, \$37,239 of which represented amounts received against prior period assessments.

Ms. Hill indicated that the current computer program cannot specifically identify the particular period to which "prior period" payments relate or the age of receivables. However, she believed that the payments received against prior period assessments did not relate to costs assessed before the year 2000. Ms. Hill indicated that she could determine older assessed costs that remain unsatisfied only by checking outstanding judgments, some of which should be considered uncollectible.

In response to Justice LaVecchia's specific question, Ms. Hill indicated that there was no reliable way of predicting whether actual collections during this budget year would exceed projected collections.

Ms. Hill reported that the costs collection computer program was experiencing some problems, but that CSI should be ready to test the program at the end of the month. She further indicated that once the system is up and running, the assessments process should occupy less people time. Ms. Hill

also reported that she has attempted to streamline the judgment procedure as well, noting that the Judgment Unit of the Superior Court has agreed to accept fewer documents in support of OBC's request for entry of judgment. However, Ms. Hill noted that there remains the issue of whom to pursue to judgment. Currently, OBC files judgments only against attorneys who are not currently suspended, since suspended attorneys generally will be required to become current in costs payments as a condition of reinstatement.

Ms. Hill next reported on the Board's monthly activity as reflected in OBC's monthly reports. Ms. Hill indicated that although the Board's dispositions were current, she has pulled one attorney to work exclusively on a District XIV case that spanned forty days of hearings. In addition, she anticipated receipt over the next several months of two more significant hearings, one of which was ongoing and already had consumed over 43 days of hearing, and another in which hearings had been scheduled to begin in August. She informed the Committee that such significant cases would impact on OBC's overall dispositions given the amount of attorney review time they would require.

Ms. Hill indicated that she is currently signing all Board decisions after a short review period by Board members, so that some delay in the transmittal process has been eliminated. Thus, she reported, decisions generally are transmitted to the Court within one week of signature.

Finally, in terms of staffing, Ms. Hill reported that she continued to be short one secretary, that person having been on sick/injured leave for over one year.

VI. Computerization

Mr. Johnson told the Committee that Robyn Hill and the vendor have met to define the DRB's needs. He further indicated that the OAE had been working with the vendor extensively to establish a project plan and that he anticipated that the new system would be operational in mid-July. However, he would be required to maintain a parallel system for at least one month to test proper functioning of the system.

Minutes prepared by: Paula Granuzzo
Dated: July 22, 2003