

AGENDA ITEM

MARCH 111-124
Executive Director & Chief
Trial Counsel Performance
Evaluation Process

DATE: March 1, 2008

TO: Members, Board Operations Committee
Members, Regulation, Admissions & Discipline Committee
Members, Board of Governors

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Executive Director and Chief Trial Counsel Annual Performance Evaluations

EXECUTIVE SUMMARY

The timetable and procedure for conducting the Executive Director's annual performance evaluation and for conducting the Chief Trial Counsel's performance evaluation are set forth below. By pre-existing Board action, the Board Operations Committee conducts the evaluation of the Executive Director in accordance with the criteria and process previously adopted and reports to the Board of Governors. The Regulation, Admissions & Discipline (RAD) Committee conducts the evaluation of the Chief Trial Counsel in accordance with the criteria and process previously adopted and reports to the Board Operations Committee. This is before the Board to renew the process for 2008 and to authorize the Board Operations and RAD Committees to commence the process for 2008. If you have questions, please call Robert Hawley at 415-538-

I. GOVERNING AUTHORITIES

A. The Executive Director

By Board action, the Executive Director of the State Bar is subject to an annual performance evaluation. The review is to be conducted by a Board committee designated by the Board, currently the Board Operations Committee. The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director assist the Board Operations Committee in this process. The criteria, timetable and procedures governing the Executive Director's evaluation are established by Board action. (See, Board Book, Tab 18 [Staffing], Article 1 [Executive Director], Section 9 [The Executive Director's Annual Performance Evaluation], Attachment 1).

The Executive Director is employed by the Board under a contract. This contract currently runs through November 2008. The contract sets the salary of the Executive Director, which was last adjusted November 2007, following the 2007 performance evaluation process.

In the immediate past, under the Executive Director's contract, only the Executive Director's salary was subject to further adjustment in the discretion of the Board, following the annual performance evaluation process. This year, due to the contract's expiration in November 2008, the entire contract is up for renegotiation in addition to the salary adjustment. To address this, it is recommended that the President be authorized by the Board to appoint a presidential subcommittee to renegotiate the Executive Director's contract this board year in conjunction with the evaluation process.

In the past, constituency comment has been sought on the Executive Director's performance from the chairs and vice-chairs of randomly selected State Bar sub-entities and from members of the profession and public. The comment received in this process has been limited and of no substantive value to the over all process. Constituency comment on the Chief Trial Counsel, on the other hand, has been substantive and of value. The Chief Trial Counsel serves the public interest as the chief enforcement officer of the State Bar's disciplinary system and is subject to confirmation in the appointment process by the state Senate. The Executive Director is selected by and responsible to the Board under the terms of her contract. In light of this, it is recommended that constituency comment continue with the Chief Trial Counsel's evaluation process but not with the Executive Director's process. Comment on the Executive Director's performance will be obtained from Board members and Senior Executive Staff. Constituency comment that is received will be considered, but it will not be actively sought.

B. The Chief Trial Counsel

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The Chief Trial Counsel position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the Chief Trial Counsel who serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel, which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The Chief Trial Counsel, by statute, reports to the discipline system oversight committee of the Board and, in connection with the exercise of prosecutorial discretion, does not report to the Executive Director.¹ (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Attachment 2; Business & Professions Code Section 6079.5, Attachment 3).

Executive Staff, including senior managers, are evaluated each year in October. the evaluation of Executive Staff was completed in October 2007. Executive Staff will be evaluated again in October 2008. At the recommendation of the Executive Director, because of the uniqueness of the Chief Trial Counsel position, the Board, through its Regulation, Admissions & Discipline Committee and Board Operations Committee, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation.

¹ Consistent with statutory authority, the Chief Trial Counsel reports to the discipline committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trail Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions, which the Executive Director executes in conformity with Board policy.

Recognizing the Executive Director's institutional role in selecting the Chief Trial Counsel, the Chief Trial Counsel's role as a senior member of the Executive Director's management team, and the responsibility of the Executive Director for institutional oversight and administration of personnel, budget, and facilities support functions of the State Bar as a whole, including the Office of the Chief Trial Counsel, the Executive Director sits as a member of the evaluation committee in connection with the Chief Trial Counsel's review. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Attachment 2). The Chief Trial Counsel's salary and salary adjustments are determined by the Executive Director. The Executive Director takes into consideration the performance evaluation conducted through this process in adjusting the Chief Trial Counsel's salary in October when Executive Staff salary adjustments are made at the discretion of the Executive Director.

The Chief Trial Counsel serves a four-year term, subject to reappointment. (Business & Professions Code Section 6079.5, Attachment 3). Scott Drexel's first term as Chief Trial Counsel expires in 2009. Mr. Drexel has advised the Executive Director that he intends to seek reappointment for a second four-year term. Consistent with the Executive Director's role in the process (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Attachment 2), the Executive Director is prepared to recommend to RAD and the Board that his reappointment be considered, subject to the outcome of the 2008 performance evaluation process. Assuming that there is a consensus that reappointment is appropriate, the State Bar would not engage in an active recruitment search for a successor. Thus, in addition to completing the performance review for the Chief Trial Counsel this period, RAD is requested to consider whether or not a successor to the current Chief Trial Counsel will be sought for the 2009-2013 term.

The criteria, timetable and procedures governing the Chief Trial Counsel's evaluation are established by Board action. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Attachment 2).

II. TIMETABLE

The following timetable is proposed for conducting these performance evaluations:

March 6 – 7	Board renews timetable and process. The President and a presidential subcommittee of the Board are authorized to renegotiate the Executive Director's contract this board year. The process governing the selection of the Chief Trial Counsel for the 2009 - 2013 term is approved. Evaluation forms are distributed to the appropriate reviewing individuals. The Chief Trial Counsel and Executive Director are invited to provide their input on their performance to the Board Operations and RAD Committees.
April 15	Completed evaluation forms are returned to the State Bar. Any written comment the Chief Trial Counsel and Executive Director wish to provide is returned to the State Bar.

- May 1 Evaluation forms are synthesized. A written composite preliminary Evaluation Report is prepared and shared with the Committees.
- May 8 The Preliminary Evaluation Report is finalized and shared with the Executive Director and Chief Trial Counsel. Their further input is obtained.
- May 15 -16 The Evaluation Report on the Executive Director is provided by the Committee to the Board and is discussed with the Executive Director.
- The Evaluation Report on the Chief Trial Counsel is provided to the Board Operations Committee and to the Regulation, Admissions & Discipline Committee and is discussed with the Chief Trial Counsel.
- The Presidential subcommittee finalizes the Executive Director's contract renewal for November 2008 and beyond.
- The Chief Trial Counsel's appointment process for the 2009-2013 term is established.

III. PROCEDURE

All communications pertaining to the evaluation process are strictly confidential. The Board Book, Tab 18 [Staffing], Article 1 [Executive Director], Section 9 [The Executive Director's Annual Performance Evaluation], Article 2 [Chief Trial Counsel] provides in this regard:

“The meetings of the committee and all information obtained in the course of the evaluation proceedings shall be confidential, and shall not be disclosed except as otherwise provided herein. Sufficient disclosure shall be made to the evaluatee on request to assure a full and fair opportunity to respond to evaluation material, except that the identity of the persons providing evaluation material shall not be disclosed.”

The Evaluation Committees and Board should strictly adhere to this confidentiality requirement.

The Board Operations Committee is chaired by the President in conducting the Executive Director's evaluation. The Regulation, Admissions & Discipline Committee is chaired by the RAD Chair in conducting the Chief Trial Counsel's Evaluation. The Executive Director sits as a full member of RAD during the Chief Trial Counsel evaluation process.

The Office of Human Resources, under the Direction of the Deputy Executive Director, has staffed and provided administrative assistance in conducting the Executive Director's and Chief Trial Counsel's reviews in the past, subject to strict confidentiality requirements. The Office of Human Resources is available to the Board Operations and RAD Committees for this purpose in connection with this review process as well.

This process follows the same procedures as in the past with the following changes: 1) the Executive Director's entire contract is renegotiated this year; 2) external constituency comment on the Executive Director will no longer be sought; 3) in addition to evaluating the Chief Trial Counsel this period, the appointment process for the Chief Trial Counsel's 2009-2013 term is being adopted.

IV. FISCAL AND/OR PERSONNEL IMPACT

Any fiscal or personnel impact is within existing budget and policy standards.

V. BOARD BOOK ADMINISTRATIVE MANUAL IMPACT

None.

VI. RECOMMENDATION AND RESOLUTION

Assuming the above meets with the approval of the Board and its Operations and Regulation, Admissions & Discipline Committees, it will serve as the procedure for the 2007-08 review process for the Executive Director and Chief Trial Counsel. Assuming this procedure is acceptable, the following resolution is recommended:

RESOLVED, that the Board Operations Committee, Board Regulation, Admissions & Discipline Committee and Board of Governors, renew for 2008 the procedure and process for conducting the Annual Performance Evaluations of the Executive Director and Chief Trial Counsel, consistent with the item before the Board Committees and Board this date; and it is

FURTHER RESOLVED that the Board Operations Committee be chaired by the President in conducting the Executive Director's evaluation and that the Regulation, Admissions & Discipline Committee be chaired by the Regulation, Admissions & Discipline chair in conducting the Chief Trial Counsel's evaluation; and it is

FURTHER RESOLVED that constituency comment on the Executive Director's performance will no longer be sought, but will be considered if received; and it is

FURTHER RESOLVED that the President is authorized to appoint a presidential subcommittee to renegotiate the Executive Director's contract to be in effect after the November 2008 expiration of the current contract, subject to Board approval of the contract terms; and it is

FURTHER RESOLVED that the request for reappointment by the current Chief Trial Counsel for the 2009 - 2013 term shall be considered by the Regulation, Admissions & Discipline Committee and the Board as part of the 2008 evaluation process.

Attachment 1

Board Book, Tab 18 [Staffing], Article 1 [Executive Director], Section 9 [The Executive Director's Annual Performance Evaluation]).

Section 9 The Executive Director's Annual Performance Evaluation

The Executive Director of the State Bar is subject to an annual performance evaluation to be completed by July of each year. The review shall be conducted by a Board Committee designated by the Board, currently the Board Operations Committee. The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director shall assist the designated Board Committee in this process.

(a) **Evaluation Criteria**

The Executive Director's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The designated Board Committee, annually sets the Executive Director performance targets and annually evaluates progress in achieving these targets. The performance criteria and competencies for evaluation are: job skills, technological proficiency, quality performance, quantity of work, leadership, teamwork and collaboration, constituency commitment, communication, fiscal accountability, development and compliance with policies and procedures, strategic perspective/planning, managing change, managing and developing staff, Board/constituency relations, valuing diversity.

(b) **Confidentiality**

The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Executive Director to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

(c) **Timetable and Procedures**

Each year, the Board sets the timetable and procedures for conducting the Executive Director's annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee shall see the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session at the July meeting.

(Source: Board of Governors' Resolutions, March 2002, March 2003, March 2004).

Attachment 2

Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel]

CHIEF TRIAL COUNSEL

Section 1 Relationship with the Executive Director

The executive director shall bring his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the board for approval. The Chief Trial Counsel shall report to the Board of Governors discipline system oversight committee consistent with Business & Professions Code Section 6079.5 on substantive issues pertaining to the discipline enforcement system. The Chief Trial Counsel and the Office of the Chief Trial Counsel shall otherwise be subject to the executive and administrative authority of the Executive Director in like manner as other executive staff.

(Source: Board of Governors' Resolution, May 20, 1997, March 2002, March 2003, March 2004, Business and Professions Code 6079.1)

Section 2 Appointment, Term, Qualifications

The rules governing the appointment, the term, and the qualifications of the chief trial counsel are described in Business & Professions Code section 6079.5(a)(b) (see State Bar Act, Appendix 3e).

(Source: Bus. & Prof. Code, §6079.5 (a) and (b).)

Section 3 The Chief Trial Counsel's Annual Performance Evaluation

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The Chief Trial Counsel position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the Chief Trial Counsel who serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The Chief Trial Counsel, by statute, reports to the discipline system oversight committee on the Board and, in connection with the exercise of prosecutorial discretion, does not report to the Executive Director.⁴

At the recommendation of the Executive Director, because of the uniqueness of the Chief Trial Counsel position, the Board, through its discipline oversight and Board Operations Committees, has undertaken the responsibilities for conducting the Chief Trial Counsel's evaluation. Recognizing the Executive Director's institutional role in selecting the Chief Trial Counsel, the Chief Trial Counsel's role as a senior member of the Executive Director's management team, and the responsibility of the Executive Director for institutional oversight and administration of personnel, budget, and facilities support functions of the State Bar as a whole,

⁴ Consistent with statutory authority, the Chief Trial Counsel reports to the discipline system oversight committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trial Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions which the Executive Director executes in conformity with Board policy.

including the Office of the Chief Trial Counsel, the Executive Director sits as a member of the Board Committee on Operations in connection with the Chief Trial Counsel's review. The Chair of the Board Committee on Regulation, Admissions & Discipline chairs the review committee.

(a) Evaluation Criteria

The Chief Trial Counsel's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The Designate Board Committee annually sets the Chief Trial Counsel's performance targets and annually evaluates progress in achieving these targets. The performance criteria and competencies for evaluation include: job skills, technology proficiency, quality performance, quality of work, leadership, teamwork and collaboration, public protection commitment, communication, fiscal accountability, compliance with policies and procedures, strategic perspective/planning, managing change, managing and developing period, interpersonal/conflict resolution skills, valuing diversity;

(b) Confidentiality

The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Chief Trial Counsel to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

(c) Timetable and Procedures

Each year, the Board sets the timetable and procedures for conducting the Chief Trial Counsel's annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee shall set the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session at the July meeting.

(Source: Board of Governor's Resolution, March 2002, March 2003, March 2004).

Attachment 3

§6079.5 Chief Trial Counsel; Appointment; Term; Qualifications

- (a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. He or she shall be appointed for a term of four years and may be reappointed for additional four-year periods. He or she shall serve at the pleasure of the board. He or she shall not engage in private practice. The State Bar shall notify the Senate Rules Committee and the Senate and Assembly Judiciary Committees within seven days of the dismissal or hiring of a chief trial counsel.

The appointment of the Chief Trial Counsel is subject to confirmation by the Senate, and the time limits prescribed in Section 1774 of the Government Code for Senate confirmation and for service in office are applicable to the appointment.

He or she shall report to and serve under the Regulation, Admissions, and Discipline Oversight Committee of the Board of Governors of the State Bar or its successor committee on attorney discipline, and shall not serve under the direction of the chief executive officer.

- (b) The chief trial counsel shall have the following qualifications:

- (1) Be an attorney licensed to practice in the State of California, be in good standing and shall not have committed any disciplinary offenses in California or any other jurisdiction.
- (2) Have a minimum of five years of experience in the practice of law, including trial experience, with law practice in broad areas of the law.
- (3) Have a minimum of two years of prosecutorial experience or similar experience in administrative agency proceedings or disciplinary agencies.
- (4) Have a minimum of two years of experience in an administrative role, overseeing staff functions.

The board may except an appointee from any of the above qualifications for good cause upon a determination of necessity to obtain the most qualified person.

On or after July 1, 1987, the chief trial counsel may, as prescribed by the Supreme Court, petition the court for a different disposition of a matter than the recommendations of the review department or the board to the court. (Added by Stats. 1986, ch. 1114. Amended by Stats. 2002, ch. 415, effective September 9, 2002)