

AGENDA ITEM

MARCH 126
Chief Trial Counsel
Appointment Process

DATE: February 23, 2009

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

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Chief Trial Counsel Appointment/Reappointment Process

EXECUTIVE SUMMARY

A timetable and procedure for conducting the Chief Trial Counsel's (CTC) request for reappointment are set forth below. By pre-existing Board action, the Regulation, Admissions & Discipline (RAD) Committee conducts the annual evaluation of the CTC in accordance with the criteria and process previously adopted and reports to the Board Operations Committee. This year, the evaluation process is converted into a consideration of the CTC's request for reappointment to another 4-year term. This item is before the Board to confirm the process for the CTC appointment process. If you have questions, please call Robert Hawley at 415-538-2277 or Robert.Hawley@calbar.ca.gov.

I. CHIEF TRIAL COUNSEL APPOINTMENT/REAPPOINTMENT PROCESS

A. The Authorities

Under Business & Professions Code Section 6079.5, the Board appoints the Chief Trial Counsel (CTC) who serves a term of four years. The Board has delegated to the Executive Director the selection of the CTC, which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The CTC, 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 1 Business & Professions Code Section 6079.5, Attachment 2). The discipline system oversight committee is currently the Board Committee on Regulation, Admissions and Discipline (RAD).

¹ Consistent with statutory authority, the Chief Trial Counsel (CTC) reports to the discipline committee and is independent of the Executive Director with respect to the exercise of the CTC's prosecutorial discretion. The CTC 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.

At the recommendation of the Executive Director, because of the uniqueness of the CTC position, the Board, through RAD and the Board Operations Committee (BOps), has undertaken the responsibility for conducting the CTC's evaluation. Recognizing the Executive Director's institutional role in selecting the CTC, the CTC's role as a senior member of the Executive Director's management team, and the responsibility of the Executive Director for institutional 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 CTC's review. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Attachment 1). The CTC'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 CTC's salary in October when Executive Staff salary adjustments are made at the discretion of the Executive Director.

The CTC serves a four-year term, subject to reappointment. (Business & Professions Code Section 6079.5, Attachment 2). The incumbent CTC's first term expires in May 2009. The incumbent, Scott Drexel, has advised the Executive Director and RAD 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 1), the Executive Director is prepared to recommend to RAD and the Board that his reappointment be considered, subject to public input on reappointment.

Assuming that there is consensus that reappointment is appropriate, the State Bar will not engage in an active recruitment search for a successor. Thus, the process set forth here is the process for the Executive Director, RAD and the Board to determine whether or not the incumbent CTC will be reappointed or whether a recruitment process will be undertaken for the 2009-2013 term.

It is recommended that the criteria for evaluating the CTC's request for reappointment be the annual evaluation reports that have been made by RAD for the past three years. These reports are available to all RAD and Board members. The standard for reappointment that is recommended here is whether there is a material and substantive reason not to reappoint in light of the evaluations received by the CTC to date. Due to the public nature of the position and its accountability to the Legislature through the confirmation process, it is also appropriate for reappointment to be open to public input and comment and for this comment to be considered in determining reappointment. Thus, assuming consensus on this approach, following the March meeting, a public announcement will be made that reappointment is being considered, and public comment will be sought. This will be evaluated at the May Board meeting, at which reappointment will be finalized or another direction taken.

B. Timeline

The following timetable is proposed for evaluating reappointment:

March 5 – 6 Board adopts timetable, standards and process governing the selection of the Chief Trial Counsel for the 2009 - 2013 term.

The request of the incumbent CTC for reappointment is officially acknowledged. The Executive Director announces that she

supports reappointment at this stage, based on past performance, subject to further input once reappointment is open for public comment.

March 9 –
April 13

The consideration being given reappointment is announced publicly and input sought from relevant constituencies.

April 14 –
April 30

RAD and the ED evaluate the public input and formulate a recommendation to the Board. RAD meetings are held as appropriate.

May 1 –
May 8

Due diligence is completed on reappointment including Legislative vetting.

May 8

A recommendation on reappointment is made by the ED and RAD and reported to the incumbent. A report is prepared for the Board.

May 14-15

Reappointment is approved by the Board of Governors and the incumbent is forwarded to the Legislature for confirmation

Or

A recruitment process is commenced by the ED in coordination with RAD. The ED appoints an interim CTC to act until a successor is selected.

II. PROCEDURE

All communications pertaining to the evaluation of the incumbent CTC for reappointment 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 RAD and the Board should strictly adhere to this confidentiality requirement.

The Regulation, Admissions & Discipline Committee is chaired by the RAD Chair in conducting the CTC's reappointment process. The Executive Director sits as a full member of RAD during the CTC process, and is responsible for bringing the ED's selection to RAD for endorsement to the Board for the position.

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 CTC's reviews in the past, subject to strict confidentiality requirements. The Office of Human Resources is available to the BOps and RAD Committees for this purpose in connection with this year's process as well.

III. FISCAL AND/OR PERSONNEL IMPACT

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

IV. BOARD BOOK ADMINISTRATIVE MANUAL IMPACT

The Resolution suspends any Board adopted rules that are inconsistent with the resolution.

V. 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 the appointment/reappointment process for the Chief Trial Counsel. Assuming this procedure is acceptable, the following resolution is recommended:

RESOLVED, that the Board Operations Committee and Board Regulation, Admissions & Discipline Committee recommend and the Board of Governors approves the appointment/reappointment process for the Chief Trial Counsel for the 2009-2013 term consistent with the item before the Board Committees and Board this date; and it is

FURTHER RESOLVED, that the Regulation, Admissions & Discipline Committee be chaired by the Regulation, Admissions & Discipline Chair in conducting the Chief Trial Counsel's appointment/reappointment process; and it is

FURTHER RESOLVED, any Board adopted procedures inconsistent with this resolution are suspended, pending further Board action.