

# AGENDA ITEM

**MARCH 114 and  
MARCH 126  
Executive Director &  
Chief Trial Counsel  
Performance  
Evaluation Process**

**DATE:** February 16 , 2007

**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

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## ***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 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 2007. If you have questions, please call Robert Hawley at 415-538-2277 or Robert.Hawley@calbar.ca.gov.***

## **I. GOVERNING AUTHORITIES**

### **A. The Executive Director**

By Board action, the Executive Director of the State Bar is subject to an annual performance review. 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, time table 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, subject to options to extend it further. The contract sets the salary of the Executive Director, which was last adjusted November 2006. The contract also provides that the Executive Director's salary is subject to further adjustment in the sole discretion of the board, following the annual performance evaluation process.

## **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.<sup>1</sup> ( 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. Evaluations of Executive Staff were completed in October 2006. Executive Staff will be evaluated again in October 2007. 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. Recognizing the Executive Director's institutional role in selecting the Chief Trial Counsel, the Chief Trial Counsel's role as a key 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.

The criteria, time table and procedures governing the Chief Trial Counsel's evaluation are established by Board action. (Attachment 2).

## **II. TIMETABLE**

The following timetable is proposed for conducting these performance evaluations:

March 8 - 9 Board renews the process for 2007.

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<sup>1</sup> 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 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.

- May 10 -12 Board meets with the Executive Director and RAD meets with the Chief Trial Counsel to exchange views on the review process. The Chief Trial Counsel and Executive Director provide a self-report on their performance against previously identified goals and objectives.
- May 10 -12 Evaluation forms are distributed to the appropriate reviewing individuals. Interested constituencies are identified and invited to provide input into the evaluation process.
- June 15 Completed evaluation forms are returned to the State Bar.
- June 15 Constituency input is returned to the State Bar.
- June 30 Evaluation forms are synthesized. A written composite preliminary Evaluation Report is prepared.
- July 13 The Preliminary Evaluation Report is shared by the respective evaluation committee with the Executive Director and Chief Trial Counsel. Their further input is obtained.
- July 13 The Committee's final Evaluation Report to the Board on the Executive Director is prepared. The Committee's final Evaluation Report on the Chief Trial Counsel is prepared.
- July 19 - 20 The Evaluation Report on the Executive Director is provided by the Committee to the Board and is discussed with the Executive Director.
- July 19 - 20 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. Courtesy copies are provided to the Board.

### 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 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.

#### **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 2006-07 review process for the Executive Director and Chief Trial Counsel. Assuming this procedure is acceptable, the following resolution is recommended:

**RESOLVED**, upon recommendation of the Board Committee on Operations, and the Board Regulation, Admissions and Discipline Oversight Committee, that the Board of Governors hereby renews for 2007 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 Committee on Operations be Chaired by the President in conducting the Executive Director's evaluation, and that the Board Regulation, Admissions and Discipline Oversight Committee (RAD) be Chaired by the RAD Chair in conducting the Chief Trial Counsel's evaluation.