



# THE STATE BAR OF CALIFORNIA

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OFFICE OF THE EXECUTIVE DIRECTOR

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**DATE:** November 10, 2010  
**TO:** Members, Regulation, Admissions & Discipline Committee  
**FROM:** Robert A. Hawley, Deputy Executive Director  
**SUBJECT:** Chief Trial Counsel Annual Performance Evaluation Procedure

## EXECUTIVE SUMMARY

*The timetable and procedure that has historically been followed in conducting the Chief Trial Counsel's (CTC's) performance evaluation are set forth below. The Regulation, Admissions & Discipline (RAD) Committee conducts the evaluation of the CTC in accordance with the criteria and process adopted by the Board and reports to the Board Operations Committee. This item is before RAD to assist in establishing the CTC evaluation process for the 2010-2014 CTC term. If you have questions, please call Robert Hawley at 415-538-2277 or Robert.Hawley@calbar.ca.gov.*

## I. GOVERNING AUTHORITIES

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The Chief Trial Counsel (CTC) position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the 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.<sup>1</sup> (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Article 3 [Lines of Authority], Attachment 1; Business & Professions Code Section 6079.5, Attachment 2).

<sup>1</sup> 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, that the Executive Director executes in conformity with Board policy.

Executive Staff, including senior managers, are evaluated each year in October. Because of the special role of the CTC position, the Board, through its Regulation, Admissions & Discipline (RAD) Committee and Board Operations Committee, has undertaken the responsibility for conducting the CTC's evaluation. Recognizing the Executive Director's institutional role regarding 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 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 CTCs review. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Article 3 [Lines of Authority] 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). Jim Towery commenced his term in July 2010, subject to Senate confirmation. This makes July 2011 a target for the first year CTC evaluation.

## **II. EVALUATION CRITERIA**

The performance criteria governing the CTC's evaluation are established by Board action. (See, Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Attachment 1), and are reflected in the evaluation form historically used to evaluate the CTC (Attachment 3). In addition to RAD members, the Board and external constituency comment has been sought on the CTC. The instructions and tools used for this are attached as Attachments 4 and 5.

## **III. EVALUATION GOALS AND OBJECTIVES**

The evaluation form anticipates setting special goals and objectives for each evaluation period. In the past, goals and objectives identified for the CTC have included:

- Strengthening the management structure of OCTC
- Enhancing the effective delegation of responsibilities to mid-level management ranks
- Examining staff productivity and accountability and seeking improvement as appropriate
- Examining office structures and policies to maximize effective use of resources
- Examining work flow and addressing backlog and case aging issues
- Maintaining and improving relationships with constituencies including the Respondent's bar
- Reducing the statutorily defined backlog

Further reducing the length of time that matters are pending at the investigation, Notice of Disciplinary Charges drafting (“Notice Open”) and Audit and Review stages

In consultation with the State Bar Court, develop and propose modifications to the Alternative Discipline Program to improve effectiveness and efficiency  
Develop and propose modifications to the Attorney Sanctions Standards to make them more comprehensive, fair and equitable

Further increase outreach efforts to attorneys, members of the public, and state and local government agencies and offices

Increase unauthorized practice of law (ULP) investigation and enforcement activities

#### **IV. EVALUATION TIMETABLE**

An example of the time table used in the past follows.

March	RAD and the Board confirm the evaluation timetable and process.  Evaluation forms are distributed to the appropriate reviewing individuals. The Chief Trial Counsel is invited to provide his input on his performance to the Board Operations and RAD Committees.
April	Completed evaluation forms are returned to the State Bar.  Any written comment the Chief Trial Counsel wish to provide is returned to the State Bar.
May	Evaluation forms are synthesized. A written composite preliminary Evaluation Report is prepared and shared with the Committees.
June	The Preliminary Evaluation Report is finalized and shared with the Chief Trial Counsel. Their further input is obtained.
July	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 Chief Trial Counsel’s evaluation is filed by the Office of Human Resources.

#### **V. EVALUATION PROCEDURE**

All communications pertaining to the evaluation process are strictly confidential. The Board Book, Tab 18 [Staffing], Article 1 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 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 the evaluation committee during the CTC evaluation process.

The Office of Human Resources, under the Direction of the Deputy Executive Director, has staffed and provided administrative assistance in conducting the 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.