

Attachment 1

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

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.

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, 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).

Board Book, Tab 18 [Staffing], Article 3 [Lines of Authority]

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The Chief Trial Counsel

Under Board policy, the Executive Director is responsible for annually evaluating the performance of all State Bar staff. (Executive Staff, including senior managers, are evaluated each year in October.) The Chief Trial Counsel position is unique. Under Business & Professions Code § 6079.5, the Board nominates the Chief Trial Counsel who, upon confirmation by the California State Senate, 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 Chief Trial Counsel, by statute, reports to the discipline system oversight committee of the Board and, in matters related to the exercise of prosecutorial discretion, does not report to the Executive Director.

As noted above, because of the uniqueness of the Chief Trial Counsel position, the Board, through its Board Regulation, Admissions and Discipline Oversight Committee and Board Committee on Operations, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation.

The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director assist the Board Committee on Operations in administering the review process.

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Procedures Governing Annual Performance Review of The Executive Director and Chief Trial Counsel

All communications pertaining to the evaluation process are strictly confidential. Division 4, Chapter 6, Article 5, Section 3 of the State Bar's Administrative Manual 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 Committee and Board should strictly adhere to this confidentiality requirement.

The President, in conducting the Executive Director's evaluation, chairs the Board Committee on Operations. The Board Regulation, Admissions and Discipline Oversight Committee's Chair chairs the Chief Trial Counsel's Evaluation.

The Office of Human Resources, under the Direction of the Deputy Executive Director staffs and provides administrative assistance in conducting the Executive Director's and Chief Trial Counsel's reviews and is subject to strict confidentiality requirements.

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Chief Trial Counsel

The Executive Director “bring[s] his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the Board for approval” who serves as a member of the Executive Director’s Senior Management Team. (Admin. Man. Div.8, Ch. 1, Art. 2.)

The Chief Trial Counsel is the Senior Executive for the Office of the Chief Trial Counsel, the enforcement/prosecutorial arm of the disciplinary system. This position is a Senior Executive of the State Bar serving subject to a statutory term. The qualifications and term of the Chief Trial Counsel are set by statute. By statute, the Chief Trial Counsel “reports to and serves under” the Board discipline system oversight committee “and does not serve under the direction of” the Executive Director. The Chief Trial Counsel is subject to the Executive Director’s institutional administration of personnel, budget, facilities and other institutional matters in conformity with the policy parameters established by the Board.

The terms and conditions of employment for the Chief Trial Counsel are set by the Executive Staff Rules, subject only to the provision that the State Bar (through its Executive Director) must assure the prosecutorial integrity and independence of the Chief Trial Counsel. The Board’s discipline oversight committee administers the Office of the Chief Trial Counsel through the Executive Director except where the prosecutorial independence of the office is threatened. Depending upon the nature of such a transgression, the Chief Trial Counsel is to report the transgression to the Board and/or the Supreme Court. (See generally, Business & Professions Code § 6079.5).

(Source: Board of Governors’ Resolutions, July 2004, July 11, 2008, January 9, 2010.)