

AGENDA ITEM

MAY 123

DATE: April 29, 2011

TO: The Board of Governors Regulation, Admissions & Discipline Oversight Committee (RAD)
Board of Governors

FROM: The CTC Performance Evaluation Subcommittee of RAD
(Jon Streeter, Chair)
Joseph Chairez, RAD Chair

SUBJECT: Chief Trial Counsel (CTC) Annual Performance Evaluation

EXECUTIVE SUMMARY

With the appointment of a new Chief Trial Counsel, the Regulation Admissions & Discipline Oversight Committee (RAD), to whom the CTC reports, determined it appropriate to revisit the form and substance of the CTC's annual performance evaluation. The RAD Chair appointed a subcommittee to review the performance evaluation process and develop appropriate new standards. The subcommittee was chaired by Jon Streeter, and consisted of members Angela Davis, James Aguirre, Wells Lyman, Michael Tenenbaum, and Luis Rodriguez. The subcommittee is reporting here the results of its deliberations on a new evaluation process and seeking adoption of the process and evaluation criteria. Robert Hawley staffed this process. If you have questions please contact Robert.Hawley@calbar.ca.gov, 415-538-2277.

INTRODUCTION

Each year, RAD performs an evaluation of the performance of the Chief Trial Counsel of the State Bar of California. Because the CTC leads the Office of Chief Trial Counsel (OCTC), the productivity and effectiveness of OCTC as a whole is a central focus of the annual performance evaluation. The CTC's evaluation includes an assessment by RAD, but also input from the Executive Director, from members of the Board of Governors, from the OCTC staff, and from other constituents of the discipline system.

Set forth below are the major performance criteria against which the CTC's performance will be evaluated. The first two criteria, OCTC Backlog Management and Overall Indicators of OCTC Efficiency and Effectiveness, are designed to be subject to specific, measurable assessment to the greatest extent possible. The third and fourth criteria, Leadership and Management Skills and Public Communication, necessarily will be

based on more subjective evaluation.

The CTC will receive both oral and written feedback based the key criteria identified. An overall performance rating and a performance rating in each of the four major performance categories (i.e., OCTC Backlog Management, Overall Indicators of OCTC Efficiency and Effectiveness, Leadership and Management Skills, Public Communication) will be given from the following rating standards: Extraordinary, Exceeds Expectations, Successfully Meets Expectations, or Needs Improvement.

GOVERNING AUTHORITIES

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 CTC who serves a term of four years, subject to legislative confirmation. 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], Article 3 [Lines of Authority], Attachment 1; Business & Professions Code Section 6079.5, Attachment 2).

Executive Staff, including senior managers, are evaluated each year in October. Because of the special role of the CTC position, the Board's RAD Committee has undertaken the responsibility for conducting the CTC's evaluation. Recognizing the Executive Director's institutional role regarding OCTC, 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 OCTC, 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], 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 confirmation and reappointment. (Business & Professions Code Section 6079.5, Attachment 2). Jim Towery commenced

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, that the Executive Director executes in conformity with Board policy.

his term July 12, 2010, subject to Senate confirmation. This makes July 2011 a target for the first year CTC evaluation.

EVALUATION CRITERIA

I. Performance Criteria I: OCTC Backlog Management

- A. Progress reducing Notice Open inventory (2011 Goal TBD).
- B. Progress reducing investigative backlog (2011 Goal TBD).
- C. Progress sustaining or improving OCTC productivity in
 - 1. Resolution of matters in Intake.
 - 2. Resolution of Investigations.
 - 3. Resolution of Notice Open matters.
- D. Progress in reducing average time from date of NDC filing to resolution.

II. Performance Criteria II: Overall Indicators of OCTC Efficiency and Effectiveness

- A. Success in meeting annual budget targets (2011 Goal TBD).
- B. Achievement of cost savings (2011 Goal TBD).
- C. Litigation results and effectiveness, as shown by
 - 1. Effective use of settlement² as a tool of resolution
 - a. Number of settlements²
 - b. Number of settlements in which discipline sought in NDC was substantially obtained.
 - 2. Success rate at trial
 - a. Number of trials³
 - b. Number of trials in which none of the charges in the NDC were sustained
 - c. Number of trials in which the charges in the NDC were substantially sustained
 - 3. Positive year-to-year “dashboard” trends in overall case-processing statistics and case cycle times, taking into account on an annual basis at least the following
 - a. Number of Complaints filed⁴
 - b. Year-end number of open Investigations
 - c. Number of cases resolved upon completion of Investigation, with no NDC filed
 - d. Year-end number of Notice Open matters
 - e. Number of NDCs filed
 - f. Number of cases resolved following filing of NDC
 - g. Within cases resolved following filing of NDC,
 - (i) Number of cases withdrawn or dismissed

² To be used as a baseline, not a standalone positive indicator.

³ To be used as a baseline, not a standalone positive indicator.

⁴ To be used as a baseline, not a standalone positive indicator.

- (ii) Number of cases resolved by settlement
 - (iii) Number of cases resolved by pretrial adjudication
 - (iv) Number of cases tried
- h. Total number of cases resolved at any point following filing of Complaint
- i. Speed of resolution
 - (i) Average investigation time (time from filing of Complaint to completion of Investigation)
 - (ii) Average Notice Open time (time from completion of Investigation to filing of NDC)
 - (iii) Average prosecution time (time from filing of NDC to resolution)
 - (iv) Average total case cycle time (time from filing of Complaint to resolution)
- j. Year-end inventory of unresolved cases (i.e. open matters)
- k. Average costs per case
 - (i) Average costs per case from date of filing of Complaint to Notice Open date
 - (ii) Average costs per case from Notice Open date to resolution.
 - (iii) Total average costs per case
- 4. Case administration: Affected Party Notification Practices
 - a. Complainants appropriately advised of the status of their matters.
 - b. Respondent attorneys timely notified of the status of the charges against them.
- 5. Number and nature of orders from the Supreme Court directing that OCTC's resolution of a case be re-opened, re-examined or reconsidered
- 6. Number and nature of cases in which the State Bar Court declined to accept a resignation with charges pending that was recommended by OCTC
- 7. Number and nature of complaints received against the discipline system from dissatisfied participants in the system.

III. Performance Criteria III: Leadership and Management Skills

- A. Quality of judgment shown in exercise of prosecutorial discretion.
- B. Success in establishing reputation for integrity, highest standards of ethics, and strong commitment to public protection.
- C. Timeliness, clarity and effectiveness of reporting to RAD and BOG.
- D. Quality of reputation with and ability to inspire confidence in key external stakeholders (i.e. the Legislature, the Supreme Court, the State Bar Court).
- E. Development, maintenance and administration of written policies designed to ensure just and uniform handling and resolution of all cases (e.g. charging guidelines, guidelines for settlement).

- F. Quality of relationship with ADDC (Association of Disciplinary Defense Counsel).
- G. Timeliness and thoroughness of response to issues raised in audits of OCTC.
- H. Clarity and utility of OCTC written communications (e.g. Discipline Report).
- I. Willingness and ability to adopt innovative approaches to management of OCTC (e.g. new approaches to cutting case backlog and expediting preparation NDCs).
- J. Outreach and education efforts directed to the legal community.
- K. Effectiveness as a manager
 - 1. Establishing and communicating office priorities and core values.
 - 2. Efficiency and effectiveness in balancing time spent in Los Angeles office vs. San Francisco office.
 - 3. Delegation to others.
 - 4. Supervising, evaluating and motivating assigned subordinates.
 - 5. Obtaining maximum productivity and cooperation from and among staff.
 - 6. Team-building and promoting good office morale.
 - 7. Planning and effectuating change within the office.
 - 8. Teamwork and collaboration in relations with Senior Staff peers.
 - 9. Commitment to appropriate level of transparency in decision-making.
 - 10. Training and mentoring.
 - 11. Personal organization and temperament.

IV. Performance Criteria IV: Public Communications

- A. OCTC Messaging effectiveness (i.e. publicly communicating OCTC successes).
- B. Level of skill as chief spokesman for the Bar on disciplinary matters.
- C. Willingness and ability to use different types of media outlets (including traditional as well as new media) in OCTC messaging.

EVALUATION PROCEDURE

All communications pertaining to the evaluation process are strictly confidential. The Board Book, Tab 18 [Staffing], Article 2 [Chief Trial Counsel] Section 3 (b) [CTC Performance Evaluation] 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 RAD Committees for this purpose in connection with this review process as well.

FISCAL / PERSONNEL IMPACT:

Personnel impact as discussed above.

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

The Board Policy Book at Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Section 3(a) [Evaluation Criteria] identifies the evaluation criteria for the Chief Trial Counsel. That criteria is changed with the action taken here.

RECOMMENDATION

It is recommended that the following resolutions be adopted.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation, Admissions and Discipline Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation, Admissions and Discipline Oversight Committee recommends that the Board of Governors adopt the Chief Trial Counsel's evaluation process and criteria as set forth in this item; and it is

FURTHER RESOLVED, the Board's Policy Book at Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Section 3(a) [Evaluation Criteria] be updated to reflect the evaluation criteria established with the action taken here.

PROPOSED BOARD RESOLUTION:

Should the Board concur with the Regulation, Admissions and Discipline Oversight Committee's recommendation, the following resolution is in order:

RESOLVED, that upon the recommendation of the Regulation, Admissions and Discipline Oversight Committee, the Board of Governors hereby adopts the Chief Trial Counsel's evaluation process and criteria as set forth in this item; and it is

FURTHER RESOLVED, the Board's Policy Book at Tab 18 [Staffing], Article 2 [Chief Trial Counsel], Section 3(a) [Evaluation Criteria] be updated to reflect the evaluation criteria established with the action taken here.